

**FIFTY-SECOND DAY**  
(Wednesday, May 6, 1987)

The Senate met at 9:30 a.m., pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Anderson, Armbrister, Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Green, Harris, Henderson, Johnson, Jones, Krier, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sims, Tejada, Truan, Uribe, Washington, Whitmire, Zaffirini.

A quorum was announced present.

The Reverend Joseph O. Phelps, Church of the Savior, Austin, offered the invocation as follows:

As we begin this day of crowded agendas, heated debates, and eloquent speeches in these chambers, we pause, our Father, to ask You to speak to us about the fragile gift of life; the precious union of this State; and our privilege and responsibility to participate in its betterment.

We ask Your forgiveness, God, pastors and politicians alike, if we choose the wrong bed in which to lie; if we choose ease over effort; if we choose the role of power-broker over servant; if we choose partisan politics over "doing justice, loving mercy, and walking humbly with our God."

Grant strength and wisdom to all as we confront the challenges of the day. Through Jesus Christ we pray, Amen.

On motion of Senator Brooks and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

**REPORTS OF STANDING COMMITTEES**

Senator Jones submitted the following report for the Committee on Finance:

S.B. 982  
S.B. 1460  
C.S.S.B. 938  
C.S.H.B. 734  
C.S.H.B. 1718  
C.S.H.B. 2329

Senator Blake submitted the following report for the Committee on Administration:

S.C.R. 103  
S.C.R. 105  
H.C.R. 137

Senator Uribe, Vice-Chairman, submitted the following report for the Committee on Health and Human Services:

S.C.R. 90  
S.C.R. 89  
S.C.R. 88  
S.C.R. 87

Senator Brooks submitted the following report for the Committee on Health and Human Services:

**H.B. 987**

Senator Uribe, Vice-Chairman, submitted the following report for the Committee on Health and Human Services:

**H.B. 156**

**S.B. 1370**

Senator Truan, Acting Chairman, submitted the following report for the Committee on Health and Human Services:

**H.B. 806**

Senator Uribe, Vice-Chairman, submitted the following report for the Committee on Health and Human Services:

**H.B. 1066**

Senator Brooks submitted the following report for the Committee on Health and Human Services:

**H.B. 81 (Amended)**

**C.S.S.B. 1073**

**C.S.S.B. 1281**

Senator McFarland submitted the following report for the Committee on Criminal Justice:

**S.B. 1278**

**S.B. 882**

**S.B. 1230**

**S.B. 929**

**S.B. 743**

**S.B. 552**

**S.B. 269**

**C.S.S.B. 146**

**C.S.S.B. 1300**

Senator Parker submitted the following report for the Committee on Education:

**S.B. 1444**

**C.S.S.B. 678**

Senator Parmer submitted the following report for the Committee on Intergovernmental Relations:

**H.B. 1003**

**S.B. 1454**

**S.B. 1340**

**S.C.R. 65**

**H.B. 689**

**H.B. 74**

**H.B. 1100**

**H.B. 1121**

**C.S.S.B. 913**

**C.S.S.B. 1131**

**H.B. 186**

C.S.H.B. 646  
C.S.S.B. 163  
C.S.S.B. 1315

Senator Caperton submitted the following report for the Committee on Jurisprudence:

S.B. 1069  
S.B. 1341  
H.B. 110  
H.B. 1125  
H.B. 558  
H.B. 834 (Amended)  
C.S.S.B. 1157  
C.S.S.B. 1436  
C.S.S.B. 1123  
S.B. 1384  
C.S.S.B. 1385  
C.S.S.B. 515

Senator Edwards submitted the following report for the Committee on Nominations:

We, your Committee on Nominations, to which were referred the attached appointments, have had same under consideration, and report them back to the Senate for final consideration.

To be a Member of the TEXAS AERONAUTICS COMMISSION: Henry A. Sibley, Runnels County.

To be a Member of the TEXAS BOARD ON AGING: Ms. Nadine W. Francis, Travis County.

To be a Member of the ADVISORY BOARD OF ATHLETIC TRAINERS: Sanford E. Miller, Nacogdoches County.

To be Members of the BOARD OF DIRECTORS, UPPER COLORADO RIVER AUTHORITY: Victor Wayne Choate, Tom Green County; Brian C. Richards, Runnels County.

To be a Member of the BOARD OF DIRECTORS, GUADALUPE-BLANCO RIVER AUTHORITY: Harry A. (Alex) Fish, Kendall County.

To be a Member of the TEXAS HISTORICAL COMMISSION: Mrs. Betty Elliott Hanna, Stephens County.

To be a Member of the TEXAS STATE BOARD OF PHARMACY: Jerry D. Pyle, Tarrant County.

To be a Member of the BOARD OF DIRECTORS, SULPHUR RIVER BASIN AUTHORITY: William O. Morriss, Bowie County.

To be Members of the TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY: John F. Lanier, Jr., Travis County; Earl Charles Lairson, Harris County.

To be a Member of the BOARD OF DIRECTORS, TEXAS TURNPIKE AUTHORITY: James N. Muns, Collin County.

To be JUDGE, 119th JUDICIAL DISTRICT, TOM GREEN COUNTY: John E. Sutton, Tom Green County.

**PENDING BEFORE THE SENATE**

To be Members of the BOARD OF PARDONS AND PAROLES: Henry Bradford Keene, Dallas County; Chris A. Mealy, Williamson County.

**NOTICE OF CONSIDERATION OF NOMINATIONS**

Senator Edwards gave notice that he would tomorrow at the conclusion of Morning Call submit to the Senate for consideration nominations to agencies, boards and commissions of the State.

**MESSAGE FROM THE HOUSE**

House Chamber  
May 6, 1987

HONORABLE W. P. HOBBY  
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

**S.B. 1333**, Relating to the Farm and Ranch Finance Program and the Family Farm and Security Program. (Amended)

**S.C.R. 108**, In memory of Houston police officer Michael Ryan.

**H.J.R. 88**, Proposing a constitutional amendment allowing the issuance of general obligation bonds for undertakings related to a Superconducting Super Collider research facility.

**H.B. 2109**, Relating to the legislative leave taken by certain fire fighters or police officers.

**H.B. 102**, Relating to the recruitment of women and ethnic minorities into programs of engineering and applied science at institutions of higher education.

**H.B. 2014**, Relating to funding of ridesharing activities by the State Highway and Public Transportation Commission.

**H.B. 908**, Relating to the authority of the Department of Public Safety to adopt regulations governing the safe operation of certain motor vehicles; providing civil and criminal penalties.

**H.B. 1617**, Relating to school board approval of a change in the boundaries of a school district.

**H.B. 865**, Relating to devices on a motor vehicle that obstruct the driver's view of the road; providing a criminal penalty.

**H.B. 1479**, Relating to an offer of merchandise in a carnival contest sponsored by a nonprofit group.

**H.B. 1847**, Relating to maternal and infant health.

**H.B. 1326**, Relating to jurisdiction of the Texas Water Commission and Texas Department of Health over plans and specifications for certain sewage disposal systems.

**H.B. 2252**, Relating to providing for tax sheltering employee contributions to the Teacher Retirement System with an employer pick up and for qualification of the retirement system under Section 401(a) of the United States Internal Revenue Code.

**S.B. 1488** by Leedom State Affairs  
 Relating to the determination and reporting of the number of full-time equivalent  
 state employees.

**HOUSE BILLS ON FIRST READING**

The following bills received from the House were read the first time and referred to the Committee indicated:

**H.B. 97**, To Committee on Health and Human Services.  
**H.B. 365**, To Committee on Jurisprudence.  
**H.B. 678**, To Committee on State Affairs.  
**H.B. 1401**, To Committee on Education.  
**H.B. 1839**, To Committee on Natural Resources.  
**H.B. 2181**, To Committee on Education.  
**H.B. 2182**, To Committee on Education.  
**H.B. 2183**, To Committee on Education.

**GUEST PRESENTED**

Senator Parmer was recognized and introduced Dr. H. W. Thomas of Fort Worth, the Capitol Physician for the Day.

The Senate extended its welcome and appreciation to Dr. Thomas.

**FLOOR PRIVILEGES GRANTED**

On motion of Senator Montford and by unanimous consent, privileges of the floor were granted to the following staff members and resource witnesses during consideration of tort reform legislation: David Kramer, Virginia Campbell, Morris Atlas, Will Barber, Michael Gallagher, Bill Edwards and Tommy Jacks.

On motion of Senator Caperton and by unanimous consent, Jerry Elliott was granted privileges of the floor during consideration of tort reform legislation.

(Senator Edwards in Chair)

**COMMITTEE SUBSTITUTE SENATE BILL 287  
ON SECOND READING**

Senator Montford moved to suspend the regular order of business to take up for consideration at this time:

**C.S.S.B. 287**, Relating to revising the Civil Practice and Remedies Code to reform procedures and remedies in civil actions for personal injury, property damage, or death and civil actions based on tortious conduct, including revisions and additions to laws governing the determination of and limitations on liability and damages.

The motion prevailed by the following vote: Yeas 29, Nays 2.

Yeas: Anderson, Armbrister, Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Green, Harris, Henderson, Johnson, Jones, Krier, Leedom, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sims, Tejada, Truan, Uribe, Whitmire, Zaffirini.

Nays: Lyon, Washington.

The bill was read second time.

Senator Montford offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **C.S.S.B. 287** by striking all below the enacting clause and substituting the following:

**ARTICLE 1. GENERAL PROVISIONS**

**SECTION 1.01. FINDINGS AND PURPOSE.** (a) The 70th Legislature, Regular Session, of the State of Texas makes the following findings:

(1) The House/Senate Joint Committee on Liability Insurance and Tort Law and Procedure, appointed in 1986, was charged with studying the availability and cost of commercial, professional, and governmental liability insurance and the impact of the tort recovery process on the insurance industry. The joint committee engaged in extensive fact-finding and reported its findings and conclusions to the legislature.

(2) A serious liability insurance crisis currently exists in the State of Texas and is having adverse effects on the availability and affordability of various types of liability insurance and the economic development and growth of this state and the well-being of its citizens.

(3) Included among the wide variety of persons and entities and activities that are being adversely affected by the liability insurance crisis are:

(A) cities and their governmental and proprietary functions;

(B) counties, school districts, and other governmental units, and the educational and human services they provide;

(C) professionals, including physicians and health care providers, and the quantity, affordability, and availability of the various services they provide;

(D) charities and other nonprofit organizations, and their humanitarian and benevolent services;

(E) day care centers and the services they provide; and

(F) businesses and industries, including the goods and services they provide and the incentives that encourage growth and expansion of existing enterprises and that attract new ventures.

(4) A lack of predictability in this state's justice system constitutes a significant contributing cause of the current liability insurance crisis.

(5) These public policy problems compel a legislative response that includes meaningful tort reform measures that will restore and maintain reasonable predictability in the civil justice system of Texas.

(6) The provisions of this Act will accomplish needed civil justice reform, while preserving the basic rights of injured persons to obtain appropriate relief through civil actions under the laws of this state.

(b) The 70th Legislature, having determined that the measures embodied in this Act are necessary and appropriate in order to reform the civil justice system of this state, enacts this legislation for the purpose of reforming the civil justice system of Texas. To this end, this Act revises appropriate procedural and substantive provisions of the Civil Practice and Remedies Code applicable to actions for personal injury, property damage, or death and other civil actions based on tortious conduct.

**ARTICLE 2. TRIAL; JUDGMENT**

**SECTION 2.01.** Subtitle A, Title 2, Civil Practice and Remedies Code, is amended by adding Chapter 9 to read as follows:

**CHAPTER 9. FRIVOLOUS PLEADINGS AND CLAIMS****SUBCHAPTER A. GENERAL PROVISIONS**

**Sec. 9.001. DEFINITIONS.** In this chapter:

(1) "Claimant" means a party, including a plaintiff, counterclaimant, cross-claimant, third-party plaintiff, or intervenor, seeking recovery of damages. In an action in which a party seeks recovery of damages for injury to another person, damage to the property of another person, death of another person, or other harm to another person, "claimant" includes both that other person and the party seeking recovery of damages.

(2) "Defendant" means a party, including a counterdefendant, cross-defendant, or third-party defendant, from whom a claimant seeks relief.

(3) "Groundless" means no basis in law and in fact.

(4) "Pleading" includes a motion.

Sec. 9.002. APPLICABILITY. (a) This chapter applies to an action in which a claimant seeks:

(1) damages for personal injury, property damage, or death, regardless of the legal theories or statutes on the basis of which recovery is sought, including an action based on intentional conduct, negligence, strict tort liability, products liability (whether strict or otherwise), or breach of warranty; or

(2) damages other than for personal injury, property damage, or death resulting from any tortious conduct, regardless of the legal theories or statutes on the basis of which recovery is sought, including libel, slander, or tortious interference with a contract or other business relation.

(b) This chapter applies to any party who is a claimant or defendant, including but not limited to:

(1) a county;

(2) a municipality;

(3) a public school district;

(4) a public junior college district;

(5) a hospital district;

(6) a hospital authority;

(7) any other political subdivision of the state; and

(8) the State of Texas.

(c) In an action to which this chapter applies, the provisions of this chapter prevail over all other law to the extent of any conflict.

Sec. 9.003. TEXAS RULES OF CIVIL PROCEDURE. This chapter does not alter the Texas Rules of Civil Procedure or the Texas Rules of Appellate Procedure.

Sec. 9.004. APPLICABILITY. This chapter does not apply to the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code) or to Chapter 21, Insurance Code.

[Sections 9.005-9.010 reserved for expansion]

#### **SUBCHAPTER B. SIGNING OF PLEADINGS**

Sec. 9.011. SIGNING OF PLEADINGS. The signing of a pleading as required by the Texas Rules of Civil Procedure constitutes a certificate by the signatory that to the signatory's best knowledge, information, and belief, formed after reasonable inquiry, the pleading is not:

(1) groundless and brought in bad faith; or

(2) groundless and brought for the purpose of harassment.

Sec. 9.012. VIOLATION; SANCTION. (a) At the trial of the action or at any hearing inquiring into the facts and law of the action, after reasonable notice to the parties, the court may on its own motion, or shall on the motion of any party to the action, determine if a pleading has been signed in violation of any one of the standards prescribed by Section 9.011.

(b) In making its determination of whether a pleading has been signed in violation of any one of the standards prescribed by Section 9.011, the court shall take into account:

(1) the multiplicity of parties;

(2) the complexity of the claims and defenses;

(3) the length of time available to the party to investigate and conduct discovery; and

(4) affidavits, depositions, and any other relevant matter.

(c) If the court determines that a pleading has been signed in violation of any one of the standards prescribed by Section 9.011, the court shall, not earlier than 90 days after the date of the determination, at the trial or hearing or at a separate



hearing following reasonable notice to the offending party, impose an appropriate sanction on the signatory, a represented party, or both.

(d) The court may not order an offending party to pay the incurred expenses of a party who stands in opposition to the offending pleading if, before the 90th day after the court makes a determination under Subsection (a), the offending party withdraws the pleading or amends the pleading to the satisfaction of the court or moves for dismissal of the pleading or the offending portion of the pleading.

(e) The sanction may include one or more of the following:

(1) the striking of a pleading or the offending portion thereof;

(2) the dismissal of a party; or

(3) an order to pay to a party who stands in opposition to the offending pleading the amount of the reasonable expenses incurred because of the filing of the pleading, including costs, reasonable attorney's fees, witness fees, fees of experts, and deposition expenses.

(f) The court may not order an offending party to pay the incurred expenses of a party who stands in opposition to the offending pleading if the court has, with respect to the same subject matter, imposed sanctions on the party who stands in opposition to the offending pleading under the Texas Rules of Civil Procedure.

Sec. 9.013. REPORT TO GRIEVANCE COMMITTEE. (a) If the court imposes a sanction against an offending party under Section 9.012, the offending party is represented by an attorney who signed the pleading in violation of any one of the standards under Section 9.011, and the court finds that the attorney has consistently engaged in activity that results in sanctions under Section 9.012, the court shall report its finding to an appropriate grievance committee as provided by the State Bar Act (Article 320a-1, Vernon's Texas Civil Statutes) or by a similar law in the jurisdiction in which the attorney resides.

(b) The report must contain:

(1) the name of the attorney who represented the offending party;

(2) the finding by the court that the pleading was signed in violation of any one of the standards under Section 9.011;

(3) a description of the sanctions imposed against the signatory and the offending party; and

(4) the finding that the attorney has consistently engaged in activity that results in sanctions under Section 9.012.

Sec. 9.014. PLEADINGS NOT FRIVOLOUS. (a) A general denial does not constitute a violation of any of the standards prescribed by Section 9.011.

(b) The amount requested for damages in a pleading does not constitute a violation of any of the standards prescribed by Section 9.011.

SECTION 2.02. The heading of Chapter 33, Civil Practice and Remedies Code, is amended to read as follows:

**CHAPTER 33. COMPARATIVE RESPONSIBILITY [NEGLIGENCE]**

SECTION 2.03. The heading of Subchapter A, Chapter 33, Civil Practice and Remedies Code, is amended to read as follows:

**SUBCHAPTER A. COMPARATIVE RESPONSIBILITY [NEGLIGENCE]**

SECTION 2.04. Section 33.001, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 33.001. COMPARATIVE RESPONSIBILITY [NEGLIGENCE]. (a) In an action to recover damages for negligence resulting in personal injury, property damage, or death, or an action for products liability grounded in negligence, a claimant may recover damages only if his percentage of responsibility is less than or equal to 50 percent.

(b) In an action to recover damages for personal injury, property damage, or death in which at least one defendant is found liable on a basis of strict tort liability, strict products liability, or breach of warranty, a claimant may recover damages only if his percentage of responsibility is less than 60 percent.

(c) In an action in which a claimant seeks damages for harm other than personal injury, property damage, or death arising out of negligence relating to any professional services rendered by an architect, attorney, certified public accountant, or engineer licensed by this state, a claimant may recover damages only if his percentage of responsibility is less than or equal to 50 percent. [In an action to recover damages for negligence resulting in death or injury to a person or property, contributory negligence does not bar recovery if the contributory negligence is not greater than the negligence of the person or persons against whom recovery is sought:

[(b) Damages allowed are diminished in proportion to the amount of negligence attributed to the person recovering.]

SECTION 2.05. Chapter 33, Civil Practice and Remedies Code, is amended by adding Section 33.002 to read as follows:

Sec. 33.002. APPLICABILITY. (a) This chapter does not apply to a claim based on an intentional tort or a claim for exemplary damages included in an action to which this chapter otherwise applies.

(b) This chapter does not apply to:

(1) an action by an employee to collect workers' compensation benefits under the workers' compensation laws of this state (Article 8306 et seq., Vernon's Texas Civil Statutes);

(2) an action brought under the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code); or

(3) an action brought under Chapter 21, Insurance Code.

SECTION 2.06. Chapter 33, Civil Practice and Remedies Code, is amended by adding Section 33.003 to read as follows:

Sec. 33.003. DETERMINATION OF COMPARATIVE RESPONSIBILITY. The trier of fact, as to each cause of action asserted, shall determine the percentage of responsibility with respect to:

(1) each claimant;

(2) each defendant; and

(3) each settling person.

SECTION 2.07. Section 33.011, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 33.011. DEFINITIONS. In this chapter [subchapter]:

(1) "Claimant" means a party seeking relief, including a plaintiff, counterclaimant, [or] cross-claimant, or third-party plaintiff, seeking recovery of damages. In an action in which a party seeks recovery of damages for injury to another person, damage to the property of another person, death of another person, or other harm to another person, "claimant" includes both that other person and the party seeking recovery of damages.

(2) "Defendant" includes any party from whom a claimant seeks relief at the time of the submission of the case to the trier of fact.

(3) "Liable defendant" means a defendant against whom a judgment can be entered for at least a portion of the damages awarded to the claimant.

(4) "Percentage of responsibility" means that percentage attributed by the trier of fact to each claimant, each defendant, or each settling person with respect to causing or contributing to cause in any way, whether by negligent act or omission, by any defective or unreasonably dangerous product, by other conduct or activity violative of the applicable legal standard, or by any combination of the foregoing, the personal injury, property damage, death, or other harm for which recovery of damages is sought.

(5) "Settling person" means a person who at the time of submission has paid or promised to pay money or anything of monetary value to a claimant

at any time with respect to the personal injury, property damage, death, or other harm for which recovery of damages is sought.

SECTION 2.08. Section 33.012, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 33.012. AMOUNT OF RECOVERY. (a) If the claimant is not barred from recovery under Section 33.001, the court shall reduce the amount of damages to be recovered by the claimant with respect to a cause of action by a percentage equal to the claimant's percentage of responsibility.

(b) If the claimant has settled with one or more persons, the court shall further reduce the amount of damages to be recovered by the claimant with respect to a cause of action by a credit equal to one of the following, as elected in accordance with Section 33.014:

(1) the sum of the dollar amounts of all settlements; or  
(2) a dollar amount equal to the sum of the following percentages of damages found by the trier of fact:

(A) 5 percent of those damages up to \$200,000;  
(B) 10 percent of those damages from \$200,001 to \$400,000;  
(C) 15 percent of those damages from \$400,001 to \$500,000; and  
(D) 20 percent of those damages greater than \$500,000.

(c) The amount of damages recoverable by the claimant may only be reduced once by the credit provided for in Subsection (b).

[Sec. 33.012. DAMAGES IN PROPORTION. If there is more than one defendant and the claimant's negligence does not exceed the total negligence of all defendants, contribution must be in proportion to the percentage of negligence attributable to each defendant.]

SECTION 2.09. Section 33.013, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 33.013. AMOUNT OF LIABILITY. (a) Except as provided in Subsections (b) and (c), a liable defendant is liable to a claimant only for the percentage of the damages found by the trier of fact equal to that defendant's percentage of responsibility with respect to the personal injury, property damage, death, or other harm for which the damages are allowed.

(b) Notwithstanding Subsection (a), each liable defendant whose percentage of responsibility is greater than 20 percent and greater than the claimant's percentage of responsibility is, in addition to his liability under Subsection (a), jointly and severally liable for the damages recoverable by the claimant under Section 33.012 with respect to a cause of action.

(c) Notwithstanding Subsection (a), each liable defendant is, in addition to his liability under Subsection (a), jointly and severally liable for the damages recoverable by the claimant under Section 33.012 with respect to a cause of action if:

(1) the claimant's percentage of responsibility is zero;  
(2) the claimant's personal injury, property damage, or death is caused by the depositing, discharge, or release into the environment of any harmful substance; or

(3) the claimant's personal injury, property damage, or death resulted from a "toxic tort." "Toxic tort" means a cause of action in tort or for breach of implied warranty under Chapter 2, Business & Commerce Code, arising out of exposure to hazardous chemicals, hazardous wastes, hazardous hydrocarbons, hazardous organic or mineral substances, hazardous radiation sources, and other hazardous substances (which usually, but need not necessarily,

arise in the work place), but not including any "drug" as defined in Section 81.001(3), Civil Practice and Remedies Code.

(d) This section does not create a cause of action.

~~[Sec. 33.013. DEFENDANT JOINTLY AND SEVERALLY LIABLE.~~  
Each defendant is jointly and severally liable for the entire amount of the judgment awarded the claimant, except that a defendant whose negligence is less than that of the claimant is liable to the claimant only for that portion of the judgment that represents the percentage of negligence attributable to him.]

SECTION 2.10. Section 33.014, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 33.014. ELECTION OF CREDIT FOR SETTLEMENTS. (a) If a claimant has settled with one or more persons, an election must be made as to which dollar credit is to be applied under Section 33.012(b). This election shall be made by any defendant filing a written election before the issues of the action are submitted to the trier of fact and, when made, shall be binding on all defendants. If no defendant makes this election, or if conflicting elections are made, all defendants are considered to have elected Subdivision (2) of Section 33.012(b).

~~[Sec. 33.014. SETTLEMENT. TORT-FEASOR NOT PARTY DEFENDANT.~~ If the existence and amount of an alleged joint tort-feasor's negligence are not submitted to the jury because the tort-feasor has paid an amount in settlement to a claimant and was not joined as a party defendant or having been joined, was dismissed or nonsuited after settling, each defendant is entitled to deduct from the amount for which he is liable to the claimant a percentage of the amount of the settlement based on the ratio of the defendant's negligence to the total negligence of all defendants.]

SECTION 2.11. Section 33.015, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 33.015. CONTRIBUTION. (a) If a defendant who is jointly and severally liable under Section 33.013 pays a percentage of the damages for which the defendant is jointly and severally liable greater than his percentage of responsibility, that defendant has a right of contribution for the overpayment against each other liable defendant to the extent that the other liable defendant has not paid the percentage of the damages found by the trier of fact equal to that other defendant's percentage of responsibility.

(b) As among themselves, each of the defendants who are jointly and severally liable under Section 33.013 is liable for the damages recoverable by the claimant under Section 33.012 in proportion to their respective percentages of responsibility. If a defendant who is jointly and severally liable pays a larger proportion of those damages than is required by his percentage of responsibility, that defendant has a right of contribution for the overpayment against each other defendant with whom he is jointly and severally liable under Section 33.013 to the extent that the other defendant has not paid the proportion of those damages required by that other defendant's percentage of responsibility.

(c) If for any reason a liable defendant does not pay or contribute the portion of the damages required by his percentage of responsibility, the amount of the damages not paid or contributed by that defendant shall be paid or contributed by the remaining defendants who are jointly and severally liable for those damages. The additional amount to be paid or contributed by each of the defendants who are jointly and severally liable for those damages shall be in proportion to their respective percentages of responsibility.

~~[Sec. 33.015. SETTLEMENT. TORT-FEASOR ————— PARTY DEFENDANT.~~ If an alleged joint tort-feasor settles with a claimant but is joined as a party defendant when the case is submitted to the jury so that the existence and amount of his negligence are submitted to the jury and his percentage of negligence

is found by the jury, the settlement is a complete release of the portion of the judgment attributable to him.]

SECTION 2.12. Subtitle C, Title 2, Civil Practice and Remedies Code, is amended by adding Chapter 41 to read as follows:

#### **CHAPTER 41. EXEMPLARY DAMAGES**

Sec. 41.001. **DEFINITIONS.** In this chapter:

(1) "Claimant" means a party, including a plaintiff, counterclaimant, cross-claimant, or third-party plaintiff, seeking recovery of exemplary damages. In a cause of action in which a party seeks recovery of exemplary damages related to injury to another person, damage to the property of another person, death of another person, or other harm to another person, "claimant" includes both that other person and the party seeking recovery of exemplary damages.

(2) "Defendant" means a party, including a counterdefendant, cross-defendant, or third-party defendant, from whom a claimant seeks relief with respect to exemplary damages.

(3) "Exemplary damages" means any damages awarded as an example to others, as a penalty, or by way of punishment. "Exemplary damages" includes punitive damages.

(4) "Fraud" means an intentional action, misrepresentation, deceit, or concealment of a material fact known to the defendant and done with the intention on the part of the defendant of depriving the claimant of property or legal rights, or of otherwise causing injury to the claimant or damage to the claimant's property.

(5) "Gross negligence" means more than momentary thoughtlessness, inadvertence, or error of judgment. It means such an entire want of care as to establish that the act or omission was the result of actual conscious indifference to the rights, safety, or welfare of the person affected.

(6) "Malice" means:

(A) conduct that is specifically intended by the defendant to cause substantial injury to the claimant; or

(B) an act that is carried out by the defendant with a flagrant disregard for the rights of others and with actual awareness on the part of the defendant that the act will, in reasonable probability, result in human death, great bodily harm, or property damage.

Sec. 41.002. **APPLICABILITY.** (a) This chapter applies to an action in which a claimant seeks exemplary damages relating to a cause of action as defined by Section 33.001.

(b) This chapter does not apply to:

(1) an action brought under the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code);

(2) an action brought under Chapter 21, Insurance Code;

(3) an action brought under the workers' compensation laws of this state (Article 8306 et seq., Vernon's Texas Civil Statutes);

(4) an action to recover exemplary damages against an employer by the employee's beneficiaries in a death action arising out of the course and scope of employment where the employer is a subscriber under the workers' compensation laws of this state (Article 8306 et seq., Vernon's Texas Civil Statutes); or

(5) an action governed by Chapter 81, Civil Practice and Remedies Code.

(c) In an action to which this chapter applies, the provisions of this chapter prevail over all other law to the extent of any conflict.

Sec. 41.003. STANDARDS FOR RECOVERY OF EXEMPLARY DAMAGES. (a) Exemplary damages may be awarded only if the claimant proves that the personal injury, property damage, death, or other harm with respect to which the claimant seeks recovery of exemplary damages results from:

- (1) fraud;
- (2) malice; or
- (3) gross negligence.

(b) The claimant must prove the elements of Subsection (a)(1), (a)(2), or (a)(3). This burden of proof may not be shifted to the defendant or satisfied by evidence of ordinary negligence.

Sec. 41.004. FACTORS PRECLUDING RECOVERY. (a) Exemplary damages may be awarded only if damages other than nominal damages are awarded.

(b) Exemplary damages may not be awarded to a claimant who elects to have his recovery multiplied under another statute.

Sec. 41.005. AWARD SPECIFIC TO DEFENDANT. In any action in which there are two or more defendants, an award of exemplary damages must be specific as to a defendant, and each defendant is liable only for the amount of the award made against that defendant.

Sec. 41.006. PREJUDGMENT INTEREST. Prejudgment interest may not be assessed or recovered on an award of exemplary damages.

Sec. 41.007. LIMITATION ON AMOUNT OF RECOVERY. Except as provided by Section 41.008, exemplary damages awarded against a defendant may not exceed four times the amount of actual damages for which that defendant is liable, or \$200,000, whichever is greater.

Sec. 41.008. EXCEPTION. Section 41.007 does not apply to exemplary damages resulting from malice as defined by Section 41.001(6)(A) or to an intentional tort.

Sec. 41.009. PROVISIONS NOT TO BE MADE KNOWN TO JURY. The provisions of Section 41.007 may not be made known to the jury through any means, including voir dire, introduction into evidence, or instruction.

### **ARTICLE 3**

SECTION 3.01. Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 81 to read as follows:

#### **CHAPTER 81. LIABILITY OF DRUG MANUFACTURERS AND SELLERS**

Sec. 81.001. DEFINITIONS. In this chapter:

(1) "Claimant" means a party, including a plaintiff, counterclaimant, cross-claimant, or third-party plaintiff, seeking recovery of exemplary damages. In an action in which a party seeks recovery of exemplary damages related to injury to another person, damage to the property of another person, death of another person, or other harm to another person, "claimant" includes both that other person and the party seeking recovery of exemplary damages.

(2) "Defendant" means a party, including a counterdefendant, cross-defendant, or third-party defendant, from whom a claimant seeks relief with respect to exemplary damages.

(3) "Drug" means:

(A) an article included in the definition of drug in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 321(g)(1)) which has been approved for marketing by the Food and Drug Administration pursuant to 21 U.S.C. Section 355;

(B) an article manufactured and labeled in accordance with the terms of an approval or license issued by the federal Food and Drug Administration;

(C) an article recognized as safe and effective under regulations established by the federal Food and Drug Administration; or

(D) childhood vaccines, including a vaccine that is intended to confer immunity against diphtheria, tetanus, pertussis, polio, measles, mumps, or rubella, or any combination of these diseases; but does not include devices or their components, parts, or accessories as defined by 21 U.S.C. Section 321(h).

(4) "Drug-related injury" means any injury, disability, illness, or condition caused by a drug.

(5) "Exemplary damages" means any damages awarded as an example to others, as a penalty, or by way of punishment. "Exemplary damages" includes punitive damages.

(6) "Manufacturer" means a person, including an officer, director, employee, or agent acting within the scope of the officer's, director's, employee's, or agent's employment or agency, that produces a drug, or that purchases and resells as the person's own product a drug produced by another person.

Sec. 81.002. APPLICABILITY. This chapter applies to an action in which a claimant seeks damages from a manufacturer for a drug-related injury, regardless of the legal theories or statutes on the basis of which recovery is sought, including actions based on negligence, strict tort liability, products liability (strict or otherwise), or breach of warranty.

Sec. 81.003. LIMITATION ON RECOVERY. (a) Except as provided by Subsection (b), in an action against a manufacturer for a drug-related injury, a claimant may not recover exemplary damages if the drug was:

(1) manufactured and labeled in accordance with the terms of an approval or license issued by the federal Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act (Chapter 9, Title 21, U.S.C.) or the Public Health Service Act (Chapter 6A, Title 42, U.S.C.); or

(2) recognized as safe and effective pursuant to conditions established by the federal Food and Drug Administration and applicable regulations, including packaging and labeling regulations, and the drug was designed, tested, manufactured, and marketed in a reasonable manner.

(b) Subsection (a) does not apply to a claimant who establishes by a preponderance of the evidence that the defendant:

(1) fraudulently or knowingly in violation of applicable regulations of the federal Food and Drug Administration withheld from or misrepresented to the agency information known to be material and relevant to the drug-related injury for which the claimant seeks recovery;

(2) knew or reasonably should have known at the time of manufacturing or distributing the drug that is alleged to have caused injury to the claimant that it was unreasonably dangerous or posed a significant risk of harm or serious, adverse side effects to ordinary users; or

(3) knew or reasonably should have known that technology was available to alter the drug to eliminate or significantly reduce the risk of harm or side effects, and that the alteration would not have had the effect of making the drug totally unmarketable due to the economic infeasibility of manufacturing the final, altered drug product.

SECTION 3.02. Chapter 101, Civil Practice and Remedies Code, is amended by adding Section 101.0215 to read as follows:

Sec. 101.0215. LIABILITY OF A MUNICIPALITY. (a) A municipality is liable under this chapter for damages arising from its governmental functions, which are those functions that are enjoined on a municipality by law and are given it by the state as part of the state's sovereignty, to be exercised by the municipality in the interest of the general public, including but not limited to:

- (1) police and fire protection;
- (2) health and sanitation services;
- (3) street construction;
- (4) street maintenance;
- (5) bridge construction and maintenance;
- (6) cemeteries;
- (7) garbage removal and disposal;
- (8) establishment and maintenance of jails;
- (9) hospitals;
- (10) sanitary and storm sewers;
- (11) airports;
- (12) waterworks;
- (13) repair garages;
- (14) parks and zoos;
- (15) museums;
- (16) libraries;
- (17) civic or convention centers;
- (18) community, neighborhood, or senior citizen centers;
- (19) operation of emergency ambulance service;
- (20) dams and reservoirs;
- (21) warning signals;
- (22) regulation of traffic;
- (23) transportation systems; and
- (24) recreational facilities, including swimming pools.

(b) This chapter does not apply to the liability of a municipality for damages arising from its proprietary functions, which are those functions that a municipality may, in its discretion, perform in the interest of the inhabitants of the municipality, including:

- (1) the operation and maintenance of a public utility;
- (2) amusements owned and operated by the municipality; and
- (3) any activity that is abnormally dangerous or ultrahazardous.

(c) The proprietary functions of a municipality do not include those governmental activities listed under Subsection (a).

SECTION 3.03. Section 101.023, Civil Practice and Remedies Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) Except as provided by Subsection (c), liability ~~liability~~ of a unit of local government under this chapter is limited to money damages in a maximum amount of \$100,000 for each person and \$300,000 for each single occurrence for bodily injury or death and \$100,000 for each single occurrence for injury to or destruction of property.

(c) Liability of a municipality under this chapter is limited to money damages in a maximum amount of \$500,000 for each person and \$1,000,000 for each single occurrence for bodily injury or death and \$100,000 for each single occurrence for injury to or destruction of property.

SECTION 3.04. Section 101.058, Civil Practice and Remedies Code, is repealed.

#### ARTICLE 4. MISCELLANEOUS PROVISIONS; TRANSITION

SECTION 4.01. DECLARATORY JUDGMENT. (a) The validity of this Act or any part of this Act may be determined in an action for declaratory judgment in a district court in Travis County pursuant to the Uniform Declaratory Judgments Act (Chapter 37, Civil Practice and Remedies Code) if it is alleged that this Act or a part of this Act affects the rights, status, or legal relation of a party in a civil action with respect to any other party in the civil action.

(b) Any appeal of a declaratory judgment of a district court, including an appeal of the judgment of an appellate court, holding this Act or any part of this



Act valid or invalid under the state or federal constitution shall be an accelerated appeal.

**SECTION 4.02. ACCELERATED APPEAL.** An appeal of a judgment or order of a county or district court or a judgment of an appellate court holding this Act or a portion of this Act valid or invalid under the state or federal constitution shall be an accelerated appeal.

**SECTION 4.03. ACCELERATED APPEALS; RULES.** An accelerated appeal, including an appeal to the supreme court, under Section 4.01(b) or Section 4.02 of this Act shall be governed by Rule 42, Texas Rules of Appellate Procedure.

**SECTION 4.04. SEVERABILITY.** (a) Except as provided by Subsection (b) of this section, if any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

(b) If a provision of Section 3.02 of this Act is held invalid or its application to any person or circumstance is held invalid, Sections 3.02, 3.03, and 3.04 of this Act are void and have no effect. If a provision of Section 3.03 of this Act is held invalid or its application to any person or circumstance is held invalid, Sections 3.02, 3.03, and 3.04 of this Act are void and have no effect. If a provision of Section 3.04 of this Act is held invalid, Sections 3.02, 3.03, and 3.04 of this Act are void and have no effect. All other sections of this Act are severable as provided in Subsection (a) of this section.

**SECTION 4.05. EFFECTIVE DATE.** (a) This Act takes effect August 31, 1987.

(b) Section 2.01 of this Act applies only to an action commenced on or after the effective date of this Act. Actions commenced before that effective date are governed with respect to the subject matter of Section 2.01 of this Act by the applicable law in effect before that effective date, and that law is continued in effect only for this purpose.

(c) Sections 2.02 through 2.12 and Article 3 of this Act apply only to:

(1) an action commenced on or after the effective date of this Act; or

(2) a new trial or retrial following appeal of the trial court's judgment in an action commenced before the effective date of this Act.

(d) An action commenced before the effective date of this Act, other than an action included under Subsection (c) of this section, is governed with respect to the subject matter of Sections 2.02 through 2.12 and Article 3 of this Act by the applicable law in effect before that date, and that law is continued in effect only for this purpose.

**SECTION 4.06.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

Senator Montford offered the following amendment to Floor Amendment No. 1:

**Floor Amendment No. 2**

Amend Floor Amendment No. 1 to C.S.S.B. 287 as follows:

(1) On page 4, line 22, strike "Practice-Consumer" and substitute "Practices-Consumer".

(2) On page 8, line 9, strike "precentage" and substitute "percentage".

(3) On page 11, line 1, strike "Sections" and substitute "Section".

- (4) On page 20, line 2, strike "Federal" and substitute "federal".
- (5) On page 20, line 4, strike "Federal" and substitute "federal".
- (6) On page 21, line 5, strike "Federal" and substitute "federal".
- (7) On page 25, line 23, strike "Section" and substitute "Sections".

The amendment was read and was adopted viva voce vote.

Senator Montford offered the following amendment to Floor Amendment No. 1:

**Floor Amendment No. 3**

Amend Floor Amendment No. 1 to C.S.S.B. 287 as follows:

- (1) On page 15, between lines 12 and 13, insert:  
(d) No defendant has a right of contribution against any settling person.
- (2) On page 15, between lines 19 and 20, insert:

SECTION 2.11A. Section 33.016, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 33.016. CLAIM AGAINST CONTRIBUTION DEFENDANT [CREDIT TOWARD LIABILITY]. (a) In this section, "contribution defendant" means any defendant, counterdefendant, or third-party defendant from whom any party seeks contribution with respect to any portion of damages for which that party may be liable, but from whom the claimant seeks no relief at the time of submission.

(b) Each liable defendant is entitled to contribution from each person who is not a settling person and who is liable to the claimant for a percentage of responsibility but from whom the claimant seeks no relief at the time of submission. A party may assert this contribution right against any such person as a contribution defendant in the claimant's action.

(c) The trier of fact shall determine as a separate issue or finding of fact the percentage of responsibility with respect to each contribution defendant solely for purposes of this section and Section 33.015 and not as a part of the percentages of responsibility determined under Section 33.003. Only the percentage of responsibility of each defendant and contribution defendant shall be included in this determination.

(d) As among liable defendants, including each defendant who is jointly and severally liable under Section 33.013, each contribution defendant's percentage of responsibility is to be included for all purposes of Section 33.015. The amount to be contributed by each contribution defendant pursuant to Section 33.015 shall be in proportion to his respective percentage of responsibility relative to the sum of percentages of responsibility of all liable defendants and liable contribution defendants. [If, because of the application of the rules of this subchapter, two claimants are liable to each other in damages, the claimant who is liable for the greater amount is entitled to a credit toward his liability in the amount of damages owed him by the other claimant.]

SECTION 2.11B. Section 33.017, Civil Practice and Remedies Code, is repealed.

The amendment was read and was adopted viva voce vote.

Senator Montford offered the following amendment to Floor Amendment No. 1:

**Floor Amendment No. 4**

Amend Floor Amendment No. 1 to C.S.S.B. 287 as follows:

- (1) On page 20, line 21, between "APPLICABILITY." and "This", insert "(a)".

(2) On page 20, lines 23 and 24, strike "regardless of the legal theories or statutes on the basis of which recovery is sought,".

(3) On page 20, between lines 26 and 27, insert:

(b) This chapter does not apply to the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code).

(4) On page 21, line 2, strike "may" and substitute "shall".

The amendment was read and was adopted viva voce vote.

(Senator Brooks in Chair)

Senator Montford offered the following amendment to Floor Amendment No. 1:

**Floor Amendment No. 5**

Amend Floor Amendment No. 1 to C.S.S.B. 287 as follows:

(1) On page 8, line 15, between "than" and "60", insert "or equal to".

(2) On page 9, line 9, strike "by an employee".

(3) On page 10, line 7, after "damages" and before the period, insert "pursuant to the provisions of Section 33.001".

(4) On page 10, line 25, after "time" and before "with", insert "in consideration of potential liability pursuant to the provisions of Section 33.001".

(5) On page 12, strike lines 12-17 and substitute:

(b) Notwithstanding Subsection (a), each liable defendant is, in addition to his liability under Subsection (a), jointly and severally liable for the damages recoverable by the claimant under Section 33.012 with respect to a cause of action if:

(1) the percentage of responsibility attributed to the defendant is not less than 20 percent; and

(2) only for a negligence action pursuant to Section 33.001(a) or (c), the percentage of responsibility attributed to the defendant is greater than the percentage of responsibility attributed to the claimant.

(6) On page 12, strike lines 22 and 23 and substitute:

(1) no percentage of responsibility is attributed to the claimant;

(7) On page 16, strike lines 11-16 and substitute:

(4) "Fraud" means fraud other than constructive fraud.

(8) On page 18, line 24, strike "for which that defendant is liable,".

The amendment was read.

Senator Lyon offered the following amendment to Floor Amendment No. 5:

**Floor Amendment No. 6**

Amend Floor Amendment No. 5 by striking Item (1) and substituting the following:

(1) On page 8, line 11, strike subsection (b) and reletter the remaining subsections accordingly.

The amendment was read.

On motion of Senator Montford, Floor Amendment No. 6 was tabled by the following vote: Yeas 28, Nays 3.

Yeas: Anderson, Armbrister, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Green, Harris, Henderson, Johnson, Jones, Krier, Leedom, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sims, Tejada, Truan, Uribe, Whitmire, Zaffirini.

Nays: Barrientos, Lyon, Washington.

Question recurring on the adoption of Floor Amendment No. 5, the amendment was adopted viva voce vote.

Senator Montford offered the following amendment to Floor Amendment No. 1:

**Floor Amendment No. 7**

Amend Floor Amendment No. 1 to C.S.S.B. 287 as follows:

On page 6, between lines 24 and 25, insert:

(g) All determinations and orders pursuant to this chapter are solely for purposes of this chapter and shall not be the basis of any liability, sanction or grievance other than as expressly provided in this chapter.

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HARRIS

The amendment was read and was adopted viva voce vote.

Senator Harris offered the following amendment to Floor Amendment No. 1:

**Floor Amendment No. 8**

Amend Floor Amendment No. 1 to C.S.S.B. 287 as follows:

(1) On page 21, strike lines 23 - 25 and substitute:

"caused injury to the claimant that it posed a significant risk of serious harm or serious, adverse side effects to persons for whom its use was intended; or".

(2) On page 22, strike lines 1-4 and substitute: "reduce the risk of harm or side effects, and that the alteration would not have had the effect of making the drug unmarketable due to the economic infeasibility of manufacturing the final, altered drug product."

The amendment was read and was adopted viva voce vote.

Senator Uribe offered the following amendment to Floor Amendment No. 1:

**Floor Amendment No. 9**

Amend Floor Amendment No. 1 on page 18, line 23, by striking the word "four" and substituting "10".

The amendment was read.

(President in Chair)

Senator Washington offered the following substitute amendment for Floor Amendment No. 9:

**Floor Amendment No. 10**

Amend the Floor Amendment by Uribe to C.S.S.B. 287, ARTICLE 2, Section 2.12 as follows:

Amend Section 41.007, Limitation on Amount of Recovery by striking all of Section 41.007 and adding a new Section 41.007 to read as follows:

**"Section 41.007. LIMITATION ON AMOUNT  
OF RECOVERY.**

Except as provided by Section 41.008, exemplary damages awarded against a defendant may not exceed 10 times the amount of actual damages, or \$200,000.00,

whichever is greater, however any amount of exemplary damages more than 5 times the amount of actual damages for which that defendant is liable shall be awarded to the State of Texas.

The amendment was read.

On motion of Senator Montford, Floor Amendment No. 10 was tabled by the following vote: Yeas 25, Nays 6.

Yeas: Anderson, Armbrister, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Green, Harris, Henderson, Jones, Krier, Leedom, McFarland, Montford, Parker, Santiesteban, Sarpalius, Sims, Tejeda, Truan, Whitmire, Zaffirini.

Nays: Barrientos, Johnson, Lyon, Parmer, Uribe, Washington.

Question recurring on the adoption of Floor Amendment No. 9, Senator Montford moved to table the amendment.

The motion to table prevailed by the following vote: Yeas 26, Nays 5.

Yeas: Anderson, Armbrister, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Green, Harris, Henderson, Jones, Krier, Leedom, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sims, Tejeda, Truan, Whitmire, Zaffirini.

Nays: Barrientos, Johnson, Lyon, Uribe, Washington.

Senator Washington offered the following amendment to Floor Amendment No. 1:

**Floor Amendment No. 11**

Amend Floor Amendment No. 1 to C.S.S.B. 287, ARTICLE 2, Section 2.12 as follows:

Amend Section 41.007, Limitation on Amount of Recovery by striking all of Section 41.007 and adding a new Section 41.007 to read as follows:

**"Section 41.007. LIMITATION ON AMOUNT  
OF RECOVERY.**

Except as provided by Section 41.008, exemplary damages awarded against a defendant may not exceed 4 times the amount of actual damages, or \$200,000.00, whichever is greater, however any amount of exemplary damages more than 4 times the amount of actual damages for which that defendant is liable shall be awarded to the State of Texas.

The amendment was read.

On motion of Senator Montford, Floor Amendment No. 11 was tabled by the following vote: Yeas 26, Nays 5.

Yeas: Anderson, Armbrister, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Green, Harris, Henderson, Jones, Krier, Leedom, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sims, Tejeda, Truan, Whitmire, Zaffirini.

Nays: Barrientos, Johnson, Lyon, Uribe, Washington.

Senator Washington offered the following amendment to Floor Amendment No. 1:

**Floor Amendment No. 12**

Amend Floor Amendment No. 1 to C.S.S.B. 287, ARTICLE 2, Section 2.12 as follows:

Amend Section 41.007, Limitation on Amount of Recovery by striking all of Section 41.007 and adding a new Section 41.007 to read as follows:

**“Section 41.007. LIMITATION ON AMOUNT  
OF RECOVERY.**

Except as provided by Section 41.008, exemplary damages awarded against a defendant may not exceed 3 times the amount of actual damages, or \$200,000.00, whichever is greater, however any amount of exemplary damages more than 3 times the amount of actual damages for which that defendant is liable shall be awarded to the State of Texas.

The amendment was read.

On motion of Senator Montford, Floor Amendment No. 12 was tabled by the following vote: Yeas 27, Nays 4.

Yeas: Anderson, Armbrister, Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Green, Harris, Henderson, Jones, Krier, Leedom, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sims, Tejeda, Truan, Whitmire, Zaffirini.

Nays: Johnson, Lyon, Uribe, Washington.

Senator Caperton offered the following amendment to Floor Amendment No. 1:

**Floor Amendment No. 13**

Amend Floor Amendment No. 1 to C.S.S.B. 287 by adding the following to Subsection (b) of Section 41.002:

(6) an action brought under the Home Solicitation Transactions Act (Article 5069, Chapter 13, Vernon's Texas Civil Statutes);

(7) an action brought under the Debt Collection Practices Act (Article 5069, Chapter 11, Vernon's Texas Civil Statutes);

(8) an action brought under Chapters 54, 91, and 92, Property Code;

(9) an action brought under the Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes);

(10) an action brought under the Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes);

(11) an action brought under the Texas Proprietary School Act, Chapter 32, Education Code;

(12) an action brought under Section 9.507 and Section 27.01, Business & Commerce Code;

(13) an action brought under Chapter 36, Family Code;

(14) an action brought under the Health Spa Act (Article 5221i, Vernon's Texas Civil Statutes);

(15) an action brought under the Business Opportunity Act (Article 5069-16.01 et seq., Vernon's Texas Civil Statutes);

(16) an action brought under the Texas Timeshare Act (Article 6537c, Vernon's Texas Civil Statutes).

The amendment was read and was adopted viva voce vote.

Senator Caperton offered the following amendment to Floor Amendment No. 1:

**Floor Amendment No. 14**

Amend Floor Amendment No. 1 to C.S.S.B. 287, in SECTION 2.04, on page 8, line 14, after the word "warranty," and before the words "a claimant" by inserting the words "under Chapter 2, Business and Commerce Code,".

The amendment was read and was adopted viva voce vote.

Senator Caperton offered the following amendment to Floor Amendment No. 1:

**Floor Amendment No. 15**

Amend Floor Amendment No. 1 to C.S.S.B. 287, in SECTION 3.02 on page 23, line 17, after the word "including" but before the colon by inserting a comma and the words "but not limited to".

The amendment was read and was adopted viva voce vote.

Senator Caperton offered the following amendment to Floor Amendment No. 1:

**Floor Amendment No. 16**

Amend Floor Amendment No. 1 to C.S.S.B. 287 by striking Subdivision (3) of Section 81.001 and substituting in lieu thereof the following:

(3)(A) "Drug" means:

(i) an article included in the definition of drug in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 321(g)(1)) which has been approved for marketing by the Food and Drug Administration pursuant to 21 U.S.C. Section 355;

(ii) an article manufactured and labeled in accordance with the terms of an approval or license issued by the Federal Food and Drug Administration;

(iii) an article recognized as safe and effective under regulations established by the Federal Food and Drug Administration; or

(iv) childhood vaccines, including a vaccine that is intended to confer immunity against diphtheria, tetanus, pertussis, polio, measles, mumps, or rubella, or any combination of these diseases.

(B) The term "drug" as defined in Paragraph (A) of this subdivision does not include devices or their components, parts, or accessories as defined by 21 U.S.C. Section 321(h).

The amendment was read and was adopted viva voce vote.

Senator Brooks offered the following amendment to Floor Amendment No. 1:

**Floor Amendment No. 17**

Amend Floor Amendment No. 1 to C.S.S.B. 287, Section 3.03, as follows:

(1) Amend Subsection (c) by adding the following sentence at the end of the subsection:

This subsection does not apply to a hospital owned, operated or leased by a municipality.

(2) Add Subsection (d) as follows:

(d) Liability of a municipality for a hospital owned, operated or leased by that municipality is limited to money damages in the maximum amount of \$100,000 for each person and \$300,000 for each single occurrence for bodily injury or death and \$100,000 for each single occurrence for injury to or destruction of property.

The amendment was read.

On motion of Senator Montford, Floor Amendment No. 17 was tabled by the following vote: Yeas 21, Nays 10.

Yeas: Anderson, Blake, Brown, Caperton, Edwards, Glasgow, Green, Harris, Henderson, Leedom, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sims, Tejada, Truan, Uribe, Zaffirini.

Nays: Armbrister, Barrientos, Brooks, Farabee, Johnson, Jones, Krier, Lyon, Washington, Whitmire.

Senator McFarland offered the following amendment to Floor Amendment No. 1:

**Floor Amendment No. 18**

Amend Floor Amendment No. 1 to C.S.S.B. 287 as follows:

On page 8, line 18, between “of” and “negligence” insert “any action grounded in negligence, including, but not limited to,”.

The amendment was read and was adopted viva voce vote.

Senator Krier offered the following amendment to Floor Amendment No. 1:

**Floor Amendment No. 19**

Amend Floor Amendment No. 1 to C.S.S.B. 287, Section 2.01, by adding the following to Section 9.002(b), on page 4, line 11:

- (5) a charitable organization;
- (6) a non-profit organization;
- ~~(5)~~ (7) a hospital district;
- ~~(6)~~ (8) any other political subdivision of the state; and
- ~~(8)~~ (9) the State of Texas.

The amendment was read and was adopted viva voce vote.

Senator Lyon offered the following amendment to Floor Amendment No. 1:

**Floor Amendment No. 20**

Amend Floor Amendment No. 1 to C.S.S.B. 287, ARTICLE 2, by striking all language after Article 2, Trial; Judgement, down to Section 2.02 and substituting the following:

SECTION 2.01 Subtitle A, Title 2, Civil Practice and Remedies Code, is amended by adding Chapter 9 to read as follows:

**CHAPTER 9 FRIVOLOUS CLAIMS AND DEFENSES**

Sec. 9.001. **DEFINITIONS.** In this chapter:

(1) “Claimant” means a party, including a plaintiff, counter-claimant, cross-claimant, intervenor, or third-party plaintiff, seeking recovery of damages.

(2) “Defendant” means a party from whom a claimant seeks a recovery of damages.

(3) “Frivolous” means groundless and brought in bad faith, or groundless and brought for the purpose of harassment.



Sec. 9.002. FRIVOLOUS CLAIM OR DEFENSE. (a) A court shall award reasonable attorney's fees related to the defense of a claim to a defendant and against a claimant if:

(1) the defendant has filed a motion of a frivolous claim as provided by Section 9.003;

(2) the defendant has not abused the discovery process as provided by Section 9.005;

(3) the trier of fact finds that the claim is frivolous; and

(4) the claim is dismissed or judgment on the claim is awarded to the defendant.

(b) A court shall award reasonable attorney's fees related to bringing a claim to a claimant and against a defendant if:

(1) the claimant has filed a motion of a frivolous defense as provided by Section 9.004;

(2) the claimant has not abused the discovery process as provided by Section 9.005;

(3) the trier of fact finds that the defense against the claim is frivolous; and

(4) judgment on the claim is awarded to the claimant.

Sec. 9.003. MOTION OF FRIVOLOUS CLAIM. (a) A defendant may recover attorney's fees under Section 9.002 only if the defendant, before the 31st day prior to the date on which the case proceeds to trial, files a written motion alleging that the claim is frivolous.

(b) The motion must state the facts that justify the defendant's position.

(c) The motion must state that if the claim is dismissed or judgment on the claim is awarded to the defendant, the defendant will seek recovery of attorney's fees.

Sec. 9.004. MOTION OF FRIVOLOUS DEFENSE. (a) A claimant may recover attorney's fees under Section 9.002 only if the claimant, before the 31st day prior to the date on which the case proceeds to trial, files a written motion alleging that the defense is frivolous.

(b) The motion must state the facts that justify the claimant's position.

(c) The motion must state that if judgment on the claim is awarded to the claimant, the claimant will seek recovery of attorney's fees.

Sec. 9.005. Motions filed pursuant to Sec. 9.003 or 9.004 may be considered a claim or defense for purposes of Sec. 9.002.

Sec. 9.006. ABUSE OF DISCOVERY. A defendant or claimant may not recover attorney's fees under Section 9.002 if the court finds that the defendant or claimant has abused the discovery process in seeking, making, or resisting discovery.

Sec. 9.007. REPORT TO GRIEVANCE COMMITTEE. If a court awards attorney's fees under Section 9.002 and the court finds that the attorney for the party against whom the award was made has consistently engaged in activity resulting in such awards, the court shall report to the appropriate grievance committee as provided by the State Bar Act (article 320a-1, Vernon's Texas Civil Statutes):

(1) the name of the attorney who represented the claimant or defendant against whom the fees were recovered;

(2) the finding by the trier of fact that a claim or defense asserted by the attorney was frivolous; and

(3) the finding that the attorney has consistently engaged in activity resulting in such awards.

Sec. 9.008. AMENDED PLEADINGS. A party may not recover under this chapter if the claim or defense identified as frivolous by motion pursuant to Sec. 9.002 of this chapter is dismissed, withdrawn, or the party asserting same moves for dismissal within 90 days from the date such motion is served.

Sec. 9.009. A party may not recover under this chapter if the multiplicity of parties or complexity of claims or defenses indicates the need for maintaining such parties or such claims or defenses in the action pending the outcome of investigation and discovery establishing that such parties or such claims or defenses should be dismissed.

The amendment was read.

On motion of Senator Montford, Floor Amendment No. 20 was tabled by the following vote: Yeas 28, Nays 3.

Yeas: Anderson, Armbrister, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Green, Harris, Henderson, Johnson, Jones, Krier, Leedom, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sims, Tejada, Truan, Uribe, Whitmire, Zaffirini.

Nays: Barrientos, Lyon, Washington.

Senator Lyon offered the following amendment to Floor Amendment No. 1:

**Floor Amendment No. 21**

Amend Floor Amendment No. 1 to C.S.S.B. 287, ARTICLE 2, Section 2.05 as follows:

Amend Sec. 33.002. Applicability., subsection (b), subpart (1) by adding at the end of that sentence the words "or actions against an employer for exemplary damages arising out of the death of an employee."

The amendment was read and was adopted viva voce vote.

Senator Lyon offered the following amendment to Floor Amendment No. 1:

**Floor Amendment No. 22**

Amend Floor Amendment No. 1 to C.S.S.B. 287 in Section 2.12, Subsection (5), by striking the word "actual" after the word "of" and before the word "conscious".

The amendment was read.

On motion of Senator Lyon and by unanimous consent, the amendment was withdrawn.

Senator Farabee offered the following amendment to Floor Amendment No. 1:

**Floor Amendment No. 23**

Amend Floor Amendment No. 1 to C.S.S.B. 287 by inserting the following appropriately numbered sections and renumbering existing sections accordingly:

SECTION . Section 104.001, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 104.001. STATE LIABILITY; PERSONS COVERED. In a cause of action based on conduct described in Section 104.002, the state shall indemnify the following persons [is liable] for actual damages, court costs, and attorney's fees adjudged against:

(1) an employee, a member of the governing board, or any other officer of a state agency, institution, or department;

(2) a former employee, former member of the governing board, or any other former officer of a state agency, institution, or department who was an employee or officer when the act or omission on which the damages are based occurred;

(3) a physician or psychiatrist licensed in this state who was performing services under a contract with the Disability Determination Division of the Texas Rehabilitation Commission, [or the] Texas Department of Mental Health and Mental Retardation, Texas Youth Commission, Texas Department of Corrections, or Texas Department of Health when the act or omission on which the damages are based occurred;

(4) a person serving on the governing board of a foundation, corporation, or association at the request and on behalf of an institution of higher education, as that term is defined by Section 61.003(8), Education Code [~~The University of Texas System~~]; or

(5) the estate of a person listed in this section.

SECTION . Title 5, Civil Practice and Remedies Code, is amended by adding Chapter 107 to read as follows:

**CHAPTER 107. LIMITATION OF LIABILITY FOR PUBLIC SERVANTS**

Sec. 107.001. **DEFINITION.** In this chapter, "public servant" means a person covered by Section 104.001.

Sec. 107.002. **LIMITATION OF LIABILITY.** A public servant is not personally liable for damages that are the result of an act or omission by the public servant in the course and scope of the public servant's office, employment, or contractual performance for or service on behalf of a state agency, institution, or department and for which the state is liable for indemnification under Section 104.002.

Sec. 107.003. **STATE LIABILITY NOT AFFECTED.** This chapter does not affect the liability of the state in Chapter 104.

SECTION . Subsection (a), Section 101.053, Civil Practice and Remedies Code, is amended to read as follows:

(a) This chapter does not apply to a claim based on an act or omission of a court of this state or any member of a court of this state acting in his official capacity or to a judicial function of a governmental unit. "Official capacity" means all duties of office and includes administrative decisions or actions.

SECTION . Section 101.055, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 101.055. **CERTAIN GOVERNMENTAL FUNCTIONS.** This chapter does not apply to a claim arising:

(1) in connection with the assessment or collection of taxes by a governmental unit;

(2) from the action of an employee while responding to an emergency call or reacting to an emergency situation if the action is in compliance with the laws and ordinances applicable to the emergency action, or in the absence of such a law or ordinance, if the action is taken with conscious indifference or reckless disregard for the safety of others; or

(3) from the failure to provide or the method of providing police or fire protection.

SECTION . Subsection (a), Section 101.102, Civil Practice and Remedies Code, is amended to read as follows:

(a) A suit under this chapter shall be brought in state court in the county in which the cause of action or a part of the cause of action arises.

SECTION . Section 102.001, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 102.001. **DEFINITIONS.** In this chapter:

(1) "Employee" includes an officer, volunteer, or employee, a former officer, volunteer, or employee, and the estate of an officer, volunteer, or employee or former officer, volunteer, or employee of a local government.

(2) "Local government" means a county, city, town, special purpose district, and any other political subdivision of the state.

SECTION . Section 104.002, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 104.002. STATE LIABILITY; CONDUCT COVERED. The state is liable for indemnification under this chapter only if the damages are based on an act or omission by the person in the course and scope of the person's office, employment, or contractual performance for or service on behalf of the agency, institution, or department and if:

(1) the damages arise out of a cause of action for negligence, except a wilful or wrongful act or an act of gross negligence; or

(2) the damages arise out of a cause of action for deprivation of a right, privilege, or immunity secured by the constitution or laws of this state or the United States, except when the court in its judgment or the jury in its verdict finds that the person acted in bad faith, with conscious indifference or reckless disregard;  
or

(3) indemnification is in the interest of the state as determined by the attorney general or his designee.

SECTION . Subsection (a), Section 104.003, Civil Practice and Remedies Code, is amended to read as follows:

(a) State liability for indemnification under this chapter may not exceed:

(1) \$100,000 to a single person and \$300,000 for a single occurrence in the case of personal injury, death, or deprivation of a right, privilege, or immunity; and

(2) \$10,000 for a single occurrence of damage to property.

SECTION . Subsection (a), Section 104.004, Civil Practice and Remedies Code, is amended to read as follows:

(a) The attorney general shall defend a public servant ~~[an individual]~~ or estate listed in Section 104.001 in a cause of action covered by this chapter.

The amendment was read and was adopted viva voce vote.

#### VOTE ON ADOPTION OF FLOOR AMENDMENT NO. 19 RECONSIDERED

On motion of Senator Krier and by unanimous consent, the vote by which Floor Amendment No. 19 was adopted was reconsidered.

Question - Shall Floor Amendment No. 19 be adopted?

On motion of Senator Krier and by unanimous consent, Floor Amendment No. 19 was tabled.

Senator Krier offered the following amendment to Floor Amendment No. 1:

#### Floor Amendment No. 24

Amend Floor Amendment No. 1 to C.S.S.B. 287, Section 2.01, by adding the following to Section 9.002(b), on page 4, line 11:

(5) a charitable organization;

(6) a non-profit organization;

~~(5) (7)~~ a hospital district;

(8) a hospital authority

~~(9)~~ (6) any other political subdivision of the state; and

~~(10)~~ (8) the State of Texas.

The amendment was read and was adopted viva voce vote.

Senator Harris offered the following amendment to Floor Amendment No. 1:

**Floor Amendment No. 25**

Amend Floor Amendment No. 1 to C.S.S.B. 287 by striking subsections (b), (c), and (d) of Section 4.05, page 26, lines 1-19, and substituting the following:

(b) Sections 2.01 through 2.12 and Article 3 of this Act apply only to suits filed on or after the effective date of this Act.

(c) If all or any part of a suit is filed before the effective date of this Act, the entire suit shall be governed with respect to the subject matter of Sections 2.01 through 2.12 and Article 3 of this Act by the applicable law in effect before that date, and that law is continued in effect only for this purpose, including any new trial or retrial of any such suit following appeal of the trial court's judgment.

(d) In actions in which a statute requires that a written notice be given to any person or entity prior to filing suit, the delivery of any such notice, or the depositing of such a notice, postage prepaid, in the United States mail, before the effective date of this Act shall constitute the filing of suit for the purposes of this Section, and such suits shall be governed with respect to the subject matter of Sections 2.01 through 2.12 and Article 3 of this Act by the applicable law in effect before that date, and that law is continued in effect only for this purpose, including any new trial or retrial of any such suit following appeal of the trial court's judgment.

The amendment was read and was adopted viva voce vote.

Question recurring on the adoption of Floor Amendment No. 1 as amended, the amendment was adopted viva voce vote.

On motion of Senator Montford and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

**RECORD OF VOTES**

Senators Lyon and Washington asked to be recorded as voting "Nay" on the passage of the bill to engrossment.

**COMMITTEE SUBSTITUTE SENATE BILL 287  
ON THIRD READING**

Senator Montford moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.S.B. 287 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 3.

Yeas: Anderson, Armbrister, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Green, Harris, Henderson, Johnson, Jones, Krier, Leedom, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sims, Tejada, Truan, Uribe, Whitmire, Zaffirini.

Nays: Barrientos, Lyon, Washington.

The bill was read third time and was passed viva voce vote.

**RECORD OF VOTES**

Senators Lyon and Washington asked to be recorded as voting "Nay" on the final passage of the bill.

House Chamber  
May 6, 1987

Respectfully,  
BETTY MURRAY, Chief Clerk  
House of Representatives

**S.B. 1492 by Green** Intergovernmental Relations  
Relating to the authority of certain municipalities to extend ordinances into their extraterritorial jurisdiction.

**S.B. 1493** by Green Economic Development  
Relating to statements of the financial condition of banks.

#### HOUSE BILLS AND RESOLUTION ON FIRST READING

The following bills and resolution received from the House were read the first time and referred to the Committee indicated:

**H.B. 102**, To Committee on Education.  
**H.B. 141**, To Committee on Jurisprudence.  
**H.B. 152**, To Committee on Economic Development.  
**H.B. 249**, To Committee on Criminal Justice.  
**H.B. 312**, To Committee on Jurisprudence.  
**H.B. 353**, To Committee on Education.  
**H.B. 508**, To Committee on Jurisprudence.  
**H.B. 708**, To Committee on Intergovernmental Relations.  
**H.B. 736**, To Committee on Jurisprudence.  
**H.B. 865**, To Committee on State Affairs.  
**H.B. 908**, To Committee on State Affairs.  
**H.B. 1213**, To Committee on Jurisprudence.  
**H.B. 1276**, To Committee on Health and Human Services.  
**H.B. 1326**, To Committee on Natural Resources.  
**H.B. 1479**, To Committee on Criminal Justice.  
**H.B. 1552**, To Committee on Criminal Justice.  
**H.B. 1606**, To Committee on Finance.  
**H.B. 1617**, To Committee on Education.  
**H.B. 1847**, To Committee on Health and Human Services.  
**H.B. 2014**, To Committee on State Affairs.  
**H.B. 2109**, To Committee on Intergovernmental Relations.  
**H.B. 2252**, To Committee on State Affairs.  
**H.J.R. 88**, To Committee on State Affairs.

#### HOUSE BILL 1248 ON SECOND READING

On motion of Senator Jones and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**H.B. 1248**, Relating to the regulation and supervision of savings and loan associations.

The bill was read second time and was passed to third reading viva voce vote.

#### HOUSE BILL 1248 ON THIRD READING

Senator Jones moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1248** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE SENATE BILL 290  
ON SECOND READING**

On motion of Senator Montford and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 290**, Relating to prejudgment interest in civil cases.

The bill was read second time.

Senator Montford offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **C.S.S.B. 290** by striking all below the enacting clause and substituting the following:

**SECTION 1.** Article 1.05, Title 79, Revised Statutes (Article 5069-1.05, Vernon's Texas Civil Statutes), is amended by adding Section 6 to read as follows:

Sec. 6. (a) Judgments in wrongful death, personal injury, and property damage cases must include prejudgment interest. Except as provided by Subsections (b), (c), and (d) of this section, prejudgment interest accrues on the amount of the judgment during the period beginning on the 180th day after the day the defendant receives written notice of a claim or on the day the suit is filed, whichever occurs first, and ending on the day preceding the day judgment is rendered.

(b) If judgment for a claimant is less than the amount of a settlement offer by the defendant, prejudgment interest does not accrue on the amount of the judgment for the period during which the offer may be accepted.

(c) If judgment for a claimant is more than the amount of the settlement offer by the defendant, prejudgment interest does not include prejudgment interest on the amount of the settlement offer for the period during which the offer may be accepted.

(d) In addition to the exceptions provided under Subsections (b) and (c) of this section, the court, in its discretion, may order that prejudgment interest does or does not accrue during periods of delay in the trial, taking into consideration:

(1) periods of delay caused by a defendant; and

(2) periods of delay caused by a claimant.

(e) In order for a settlement offer to toll the running of prejudgment interest in accordance with the provisions of this section, the offer must be communicated to a party or his attorney or representative in writing.

(f) If a settlement offer is made for other than present cash payment at the time of settlement, prejudgment interest on the amount of the settlement offer is computed on the basis of cost or fair market value of the settlement offer at the time it is made.

(g) The rate of prejudgment interest is computed in the same manner as the rate of postjudgment interest.

**SECTION 2.** If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

**SECTION 3.** (a) This Act takes effect August 31, 1987.

(b) This Act applies only to:

(1) an action commenced on or after the effective date of this Act; or

(2) a new trial or retrial following appeal of the trial court's judgment in an action commenced before the effective date of this Act.

(c) An action commenced before the effective date of this Act, other than an action included under Subsection (b) of this section, is governed with respect to the



subject matter of this Act by the applicable law in effect before the effective date of this Act, and that law is continued in effect only for this purpose.

**SECTION 4.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

Senator Lyon offered the following amendment to Floor Amendment No. 1:

**Floor Amendment No. 2**

Amend Floor Amendment No. 1 to **C.S.S.B. 290**, **SECTION 1**, Sec. 6 by adding the words "actual or" after the word "receives" and before the word "written".

The amendment was read.

On motion of Senator Lyon and by unanimous consent, the amendment was withdrawn.

Question recurring on the adoption of Floor Amendment No. 1, the amendment was adopted viva voce vote.

On motion of Senator Montford and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

**COMMITTEE SUBSTITUTE SENATE BILL 290  
ON THIRD READING**

Senator Montford moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.S.B. 290** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

**COMMITTEE SUBSTITUTE SENATE BILL 329  
ON SECOND READING**

On motion of Senator Montford and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 329**, Relating to the venue of certain civil actions.

The bill was read second time.

Senator Montford offered the following amendment to the bill:

Amend **C.S.S.B. 329** by striking all below the enacting clause and substituting the following:

**SECTION 1.** Section 15.036, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 15.036. **CORPORATIONS AND ASSOCIATIONS.** A suit against a private corporation, association, partnership, or joint-stock company may be brought in the county in which its principal office is situated, in the county in which all or a part of the cause of action arose, or in the county in which the plaintiff resided when all or a part of the cause of action arose, provided the corporation,

association, partnership, or joint-stock company has an agency or representative in the county, or, if the corporation, association, partnership, or joint-stock company had no agency or representative in the county in which the plaintiff resided, when all or a part of the cause of action arose, then suit may be brought in the county nearest that in which plaintiff resided at that time in which the corporation, association, partnership, or joint-stock company then had an agency or representative. ~~[A suit against a railroad corporation or against any assignee, trustee, or receiver operating its railway may also be brought in any county through or into which the railroad of the corporation extends or is operated.]~~ A suit against a receiver of a person or a corporation may also be brought as otherwise provided by law.

SECTION 2. Section 15.034, Civil Practice and Remedies Code, is repealed.

SECTION 3. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 4. (a) This Act takes effect on August 31, 1987.

(b) This Act applies to all actions commenced on or after the effective date of this Act. Actions commenced before the effective date of this Act are governed with respect to the subject matter of this Act by the applicable law in effect prior to that effective date, and that law is continued in effect only for this purpose.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted viva voce vote.

On motion of Senator Montford and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

#### RECORD OF VOTE

Senator Washington asked to be recorded as voting "Nay" on the passage of the bill to engrossment.

#### COMMITTEE SUBSTITUTE SENATE BILL 329 ON THIRD READING

Senator Montford moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.S.B. 329 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

#### RECORD OF VOTE

Senator Washington asked to be recorded as voting "Nay" on the final passage of the bill.

#### MESSAGE FROM THE HOUSE

House Chamber  
May 6, 1987

HONORABLE W. P. HOBBY  
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

The House has concurred in Senate amendments to **H.J.R. 48** by a record vote of 140 Ayes, 1 No, 1 Present-not voting.

**S.B. 1148**, Relating to the creation, operation, and regulation of risk retention groups and purchasing groups. (Amended)

Respectfully,

BETTY MURRAY, Chief Clerk  
House of Representatives

#### SENATE JOINT RESOLUTION 26 ON SECOND READING

Senator Montford asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

**S.J.R. 26**, Proposing a constitutional amendment relating to the immunity of a city or town from liability for damages arising from its proprietary functions.

There was objection.

Senator Montford then moved to suspend the regular order of business and take up **S.J.R. 26** for consideration at this time.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The resolution was read second time.

Senator Montford offered the following amendment to the resolution:

Amend **S.J.R. 26** by striking all below the resolving clause and substituting the following:

SECTION 1. Article XI of the Texas Constitution is amended by adding Section 13 to read as follows:

Sec. 13. (a) Notwithstanding any other provision of this constitution, the legislature may by law define for all purposes those functions of a municipality that are to be considered governmental and those that are proprietary, including reclassifying a function's classification assigned under prior statute or common law.

(b) This section applies to laws enacted by the 70th Legislature, Regular Session, 1987, and to all subsequent regular or special sessions of the legislature.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 3, 1987. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment authorizing the legislature to define for all purposes the governmental and proprietary functions of a municipality."

The amendment was read and was adopted viva voce vote.

On motion of Senator Montford and by unanimous consent, the caption was amended to conform to the body of the resolution as amended.

The resolution as amended was passed to engrossment viva voce vote.

#### RECORD OF VOTE

Senator Washington asked to be recorded as voting "Nay" on the passage of the resolution to engrossment.

**SENATE JOINT RESOLUTION 26 ON THIRD READING**

Senator Montford moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that S.J.R. 26 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The resolution was read third time and was passed by the following vote: Yeas 30, Nays 1. (Same as previous roll call)

**COMMITTEE SUBSTITUTE SENATE BILL 202  
ON SECOND READING**

On motion of Senator Farabee and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 202**, Relating to the liability of certain charitable organizations and their volunteers.

The bill was read second time.

Senator Farabee offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend C.S.S.B. 202 by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 84 to read as follows:

**CHAPTER 84. CHARITABLE IMMUNITY AND LIABILITY**

Sec. 84.001. NAME OF ACT. This Act may be cited as the Charitable Immunity and Liability Act of 1987.

Sec. 84.002. FINDINGS AND PURPOSES. The Legislature of the State of Texas finds that:

(1) robust, active, bona fide, and well-supported charitable organizations are needed within Texas to perform essential and needed services;

(2) the willingness of volunteers to offer their services to these organizations is deterred by the perception of personal liability arising out of the services rendered to these organizations;

(3) because of these concerns over personal liability, volunteers are withdrawing from services in all capacities;

(4) these same organizations have a further problem in obtaining and affording liability insurance for the organization and its employees and volunteers;

(5) these problems combine to diminish the services being provided to Texas and local communities because of higher costs and fewer programs;

(6) the citizens of this state have an overriding interest in the continued and increased delivery of these services that must be balanced with other policy considerations; and

(7) because of the above conditions and policy considerations, it is the purpose of this Act to reduce the liability exposure and insurance costs of these organizations and their employees and volunteers in order to encourage volunteer services and maximize the resources devoted to delivering these services.

Sec. 84.003. DEFINITIONS. In this chapter:

(1) "Charitable organization" means:

(A) any organization exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c)(3) or 501(c)(4) of the code, if it is a nonprofit corporation, foundation, community chest, or fund organized and operated exclusively for charitable, religious, prevention of cruelty to children or animals, or educational purposes, excluding alumni associations and related on-campus organizations, or is organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in a community; or

(B) any bona fide charitable, religious, prevention of cruelty to children or animals, or educational organization, excluding alumni associations and related on-campus organizations, or other organization organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in a community, and that:

(i) is organized and operated exclusively for one or more of the above purposes;

(ii) does not engage in activities which in themselves are not in furtherance of the purpose or purposes;

(iii) does not directly or indirectly participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office;

(iv) dedicates its assets to achieving the stated purpose or purposes of the organization;

(v) does not allow any part of its net assets on dissolution of the organization to inure to the benefit of any group, shareholder, or individual; and

(vi) normally receives more than one-third of its support in any year from private or public gifts, grants, contributions, or membership fees.

(2) "Volunteer" means a person rendering services for or on behalf of a charitable organization who does not receive compensation in excess of reimbursement for expenses incurred, and such term includes a person serving as a director, officer, trustee, or direct service volunteer.

(3) "Employee" means any person, including an officer or director, who is in the paid service of a charitable organization, but does not include an independent contractor.

Sec. 84.004. VOLUNTEER LIABILITY. (a) Except as provided by Subsection (b) of this section and Section 84.007 of this Act, a volunteer of a charitable organization is immune from civil liability for any act or omission resulting in death, damage, or injury if the volunteer was acting in the course and scope of his duties or functions within the organization.

(b) A volunteer of a charitable organization is liable to a person for death, damage, or injury to the person or his property proximately caused by any act or omission arising from the operation or use of any motor-driven equipment, including an airplane, to the extent insurance coverage is required by Section 1A, Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes), and to the extent of any existing insurance coverage applicable to the act or omission.

(c) The provisions of this section apply only to the liability of volunteers and do not apply to the liability of the organization for acts or omissions of volunteers.

Sec. 84.005. EMPLOYEE LIABILITY. Except as provided in Section 84.007 of this Act, in any civil action brought against an employee of a nonhospital

charitable organization for damages based on an act or omission by the person in the course and scope of the person's employment, the liability of the employee is limited to money damages in a maximum amount of \$500,000 for each person and \$1,000,000 for each single occurrence of bodily injury or death and \$100,000 for each single occurrence for injury to or destruction of property.

Sec. 84.006. ORGANIZATION LIABILITY. Except as provided in Section 84.007 of this Act, in any civil action brought against a nonhospital charitable organization for damages based on an act or omission by the organization or its employees or volunteers, the liability of the organization is limited to money damages in a maximum amount of \$500,000 for each person and \$1,000,000 for each single occurrence of bodily injury or death and \$100,000 for each single occurrence for injury to or destruction of property.

Sec. 84.007. APPLICABILITY. (a) This chapter does not apply to an act or omission that is intentional, wilfully or wantonly negligent, or done with conscious indifference or reckless disregard for the safety of others.

(b) This chapter does not limit or modify the duties or liabilities of a member of the board of directors or an officer to the organization or its members and shareholders.

(c) This chapter does not limit the liability of an organization or its employees or volunteers if the organization was formed substantially to limit its liability under this chapter.

(d) This chapter does not apply to organizations formed to dispose, remove, or store hazardous waste, industrial solid waste, radioactive waste, municipal solid waste, garbage, or sludge as those terms are defined under applicable state and federal law. This subsection shall be liberally construed to effectuate its purpose.

(e) Sections 84.005 and 84.006 of this chapter do not apply to a health care provider as defined in the Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), unless the provider is a federally funded migrant or community health center under the Public Health Service Act (42 U.S.C.A. Sections 254 (c) and (d)) or unless the provider provides discounted services at or below costs based on the ability of the beneficiary to pay. In no event shall Sections 84.005 and 84.006 of this chapter apply to a general hospital or special hospital as defined in the Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes) or a facility or institution licensed under the Texas Mental Health Code (Article 5547-1 et seq., Vernon's Texas Civil Statutes), or Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442c, Vernon's Texas Civil Statutes).

(f) This chapter does not apply to a governmental unit or employee of a governmental unit as defined in the Texas Tort Claims Act (Subchapter A, Chapter 101, Civil Practice and Remedies Code).

(g) Sections 84.005 and 84.006 of this Act do not apply to any organization that does not have liability insurance coverage for the organization in the amount of \$500,000 for death or bodily injury to a person, \$1,000,000 for each single occurrence of bodily injury or death, and \$100,000 for each single occurrence for injury to or destruction of property.

Sec. 84.008. SEVERABILITY. If any clause or provision of this statute or its application to any person or organization is held unconstitutional, such invalidity does not affect other clauses, provisions, or applications of this statute that can be given effect without the invalid clause or provision and shall not affect or nullify the remainder of the Act or any other clause or provision, but the effect shall be confined to the clause or provision held to be invalid or unconstitutional and to this end the Act is declared to be severable.

SECTION 2. This Act takes effect September 1, 1987, and applies only to causes of action that accrue on or after that date. An action that accrued before the

effective date of this Act is governed by the law in effect at the time the action accrued, and that law is continued in effect for this purpose.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

Senator Farabee offered the following amendment to Floor Amendment No. 1:

**Floor Amendment No. 2**

Amend Floor Amendment No. 1 to C.S.S.B. 202 in the following manner:

1. On page 2, line 14 insert "private primary or secondary schools," between "excluding" and "alumni".
2. On page 5, line 14 insert "usually" between "provider" and "provides".
3. Change subsection (g) on page 5, line 27 through page 6, line 2 to read as follows:

(g) Sections 84.005 and 84.006 of this act do not apply to any charitable organization that does not have automobile and general liability insurance coverage in effect on any act or omission to which this chapter applies. The coverage shall apply to the acts or omissions of the organization and its employees and volunteers and be in an amount at least equal to the liability limits set forth in Sections 84.005 and 84.006 for death, bodily injury, or damage to or destruction of property. The coverage may be provided under a contract of insurance or other plan of insurance authorized by statute. Nothing in this chapter shall limit the liability of any insurer or insurance plan in an action under Chapter 21, Insurance Code, or in action or bad faith conduct, breach of fiduciary duty or negligent failure to settle a claim.

The amendment was read and was adopted viva voce vote.

Senator Farabee offered the following amendment to Floor Amendment No. 1:

**Floor Amendment No. 3**

Amend Floor Amendment No. 1 to C.S.S.B. 202, SECTION 84.007(e), on page 5, line 14 by changing Sections 254(c) and (d) to Sections 254 (b) and (c).

The amendment was read and was adopted viva voce vote.

Senator Johnson offered the following amendment to Floor Amendment No. 1:

**Floor Amendment No. 4**

Amend Floor Amendment No. 1 to C.S.S.B. 202 on line 16, page 5, by inserting after "pay,":

Acceptance of Medicare or Medicaid payments will not disqualify a health care provider under this section.

The amendment was read and was adopted viva voce vote.

Question recurring on the adoption of Floor Amendment No. 1 as amended, the amendment was adopted viva voce vote.

On motion of Senator Farabee and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

**RECORD OF VOTE**

Senator Washington asked to be recorded as voting "Nay" on the passage of the bill to engrossment.

**COMMITTEE SUBSTITUTE SENATE BILL 202  
ON THIRD READING**

Senator Farabee moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.S.B. 202 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

**RECORD OF VOTE**

Senator Washington asked to be recorded as voting "Nay" on the final passage of the bill.

**COMMITTEE SUBSTITUTE SENATE BILL 175  
ON SECOND READING**

On motion of Senator Farabee and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 175, Relating to the creation and operation of the Texas Nonprofit Organizations Liability Pool.

The bill was read second time and was passed to engrossment viva voce vote.

**COMMITTEE SUBSTITUTE SENATE BILL 175  
ON THIRD READING**

Senator Farabee moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.S.B. 175 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

**COMMITTEE SUBSTITUTE SENATE BILL 688  
ON SECOND READING**

On motion of Senator Farabee and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 688, Relating to the creation, powers, and duties of the division of risk management.

The bill was read second time.

Senator Farabee offered the following amendment to the bill:



Amend C.S.S.B. 688 by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Chapter 4, Title 70, Revised Statutes, is amended by adding Article 4413a.2 to read as follows:

Art. 4413a.2. DIVISION OF RISK MANAGEMENT

Sec. 1. STATEMENT OF LEGISLATIVE PURPOSE. The legislature recognizes that the consequences of uninsured liability of the state under the Texas Tort Claims Act (Chapter 101, Civil Practice and Remedies Code), Chapter 104 of the Civil Practice and Remedies Code, and federal law and the increasing claims under the workers' compensation laws of this state have undesirable effects on the financial stability of the State of Texas. It is the purpose of the legislature in enacting this article to provide a mechanism to reduce the state's exposure to risks of liability under state and federal law by pursuing the implementation of comprehensive risk management programs in all state agencies.

Sec. 2. DEFINITIONS. In this article: (a) "Board" means the Industrial Accident Board.

(b) "State agency" means a board, commission, department, office, or other agency in the executive, judicial, or legislative branch of state government which was created under the constitution or a statute of the state and which has authority that is not limited to a geographical portion of the state, and includes an institution of higher education as defined by Section 61.003, Education Code. "State agency" does not include an entity with fewer than five employees.

Sec. 3. APPLICABILITY. (a) This article does not apply to those state agencies that have medical malpractice, workers' compensation, and/or other self-insurance coverage with associated effective risk management programs, prior to January 1, 1987.

(b) Any state agency, other than an agency under Subsection (a) of this section, that has not implemented an effective risk management program to reduce property and liability losses, including workers' compensation claims, by January 1, 1989, in accordance with guidelines promulgated by the board pursuant to Section 4 of this article, is subject to this article and shall enter into an interagency contract pursuant to Section 10 of this article. Each agency shall submit to the board any information and reports required by the board on the agency's program, and the board shall make a determination as to whether the risk management program implemented by the agency is effective.

Sec. 4. DUTIES OF THE BOARD. The board shall promulgate guidelines for a comprehensive risk management program applicable to all state agencies with no risk management program prior to January 1, 1987, and shall assist those state agencies in the implementation of such a program before January 1, 1989. The board may appoint a state risk manager or an insurance specialist to develop the guidelines and assist the agencies in implementation of the program.

Sec. 5. CREATION OF DIVISION OF RISK MANAGEMENT. (a) The division of risk management is created in the Industrial Accident Board.

(1) The board shall appoint a state risk manager as head of the division.

(2) The state risk manager shall appoint such other personnel as may be necessary for the efficient operation of the division to carry out the purposes of this article.

(b) The division of risk management and the state risk manager shall exercise their powers and perform their duties specified by this Act under the supervision of the board.

Sec. 6. POWERS AND DUTIES OF THE DIVISION. The division shall:

(1) develop and administer a system that identifies the property and liability losses, including workers' compensation, of each state agency;

(2) develop and administer a system that identifies and evaluates the exposure of each state agency to claims for property and liability losses, including workers' compensation;

(3) develop and administer a system to identify the administrative costs of risk management incurred by each state agency;

(4) develop a system to reduce property and liability losses, including workers' compensation, incurred by each state agency; and

(5) make recommendations to the legislature regarding methods to reduce the exposure of state agencies to the risks of property and liability losses, including workers' compensation.

Sec. 7. POWERS OF THE STATE RISK MANAGER. In order to perform the powers and duties of the division as set forth in this Act, the state risk manager, with approval of the board, shall:

(1) supervise the development and administration of the following programs of the division:

(A) a system to identify the property and liability losses and costs of risk management of each state agency; and

(B) a system to identify and evaluate the exposure of each state agency to claims for property and liability losses; and

(2) supervise the development of a system to reduce property and liability losses incurred by each state agency.

Sec. 8. REPORT. On or before January 1, 1991, the division shall report to the legislature regarding the operation and management of the risk management division and the handling of claims against the state. Such report shall include the number and amount of claims settled, the number and amount of final judgments paid, and recommendations for the coordination and administration of a comprehensive risk management program to serve all state agencies, including any recommendations for statutory changes to implement such a program.

Sec. 9. RULES AND REGULATIONS. The state risk manager with the approval of the board may promulgate reasonable rules and regulations to carry out the purposes of this Act, including but not limited to reporting requirements for all state agencies.

Sec. 10. INTERAGENCY CONTRACTS. The costs of administering this Act shall be reimbursed to the board by each state agency subject to this Act by interagency contract, as authorized by Article 4413(32). Reimbursable costs shall include necessary services of employees, necessary materials, and necessary equipment, including computer hardware and software.

SECTION 2. EFFECTIVE DATES. Sections 5 through 10 of Article 4413a.2, as added by this Act, take effect January 1, 1989. The remainder of the article takes effect September 1, 1987.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted viva voce vote.

On motion of Senator Farabee and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

**COMMITTEE SUBSTITUTE SENATE BILL 688  
ON THIRD READING**

Senator Farabee moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.S.B. 688 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

**COMMITTEE SUBSTITUTE SENATE BILL 291  
ON SECOND READING**

On motion of Senator Jones and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 291**, Relating to the provision and regulation of certain liability insurance; providing penalties.

The bill was read second time.

Senator Jones offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend Section 5.07, **C.S.S.B. 291**, subsection "Sec. 18," line 67, page 27, of the printed bill to read as follows:

"Sec. 18. COVERAGE. Excess liability coverage provided by the pool may be provided on a claims-made or an occurrence basis."

The amendment was read and was adopted viva voce vote.

Senator Caperton offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **C.S.S.B. 291** by deleting Article 1.24B and substituting in lieu thereof the following:

**Art. 1.24B. LIABILITY INSURANCE CLOSED CLAIM REPORTS**

**Sec. 1. DEFINITIONS. In this article:**

(1) "Liability insurance" means the following types of insurance:

(A) general liability;

(B) medical professional liability;

(C) professional liability other than medical professional liability;

(D) commercial automobile liability;

(E) the liability portion of commercial multiperil coverage; and

(F) any other types or lines of liability insurance designated by the State Board of Insurance under Section 4 of this article.

(2) "Insurer" means:

(A) each insurance company or other entity admitted to do business and authorized to write liability insurance in this state, including county mutual insurance companies, Lloyd's plan companies, and reciprocal or interinsurance exchanges but excluding farm mutual insurance companies and county mutual fire insurance companies writing exclusively industrial fire insurance as defined by Article 17.02 of this code; and

(B) each pool, joint underwriting association, or self-insurance mechanism or trust authorized by law to insure its participants, subscribers, or members against liability.

Sec. 2. CLAIM REPORTS. (a) Not later than the last day of the calendar month following the calendar month in which a claim for recovery under a liability insurance policy is closed, the insurer shall file with the State Board of Insurance a closed claim report on a form prescribed by the Board for that closed claim if the indemnity payment made on the claim under the coverage was \$25,000 or more for damages for bodily injury.

(b) The State Board of Insurance may require the insurer to include in a closed claim report filed under Subsection (a) of this section information relating to payments made for property damage on the claim under the coverage.

(c) For a claim under a liability insurance policy that is closed for which the insurer makes indemnity payments under the coverage for an amount less than \$25,000 but more than \$10,000 for bodily injury, the State Board of Insurance shall require the insurer closing the claim to file with the Board a summary claim report of the claim. The report shall be filed on a form prescribed by the Board not later than the last day of the calendar month following the month in which a claim for recovery under a liability insurance policy covered by this subsection is closed.

(d) For all claims under liability policies which claims are closed for which the insurer makes indemnity payments for an amount of \$10,000 or less, including claims for which no indemnity payment is made on closing, the State Board of Insurance shall require the insurer closing the claim to file with the Board one report containing the total pertinent figures for all such claims closed within the calendar month. This report shall be filed on a form prescribed by the Board not later than the last day of the calendar month following the month in which the claim for recovery under a liability insurance policy covered by this subsection is closed.

Sec. 3. CONTENT OF CLOSED CLAIM REPORT FORM. The closed claim report form adopted by the State Board of Insurance for reports under Subsection (a) of Section 2 of this article must include provisions for reporting:

- (1) information relating to the identification of the insurer;
- (2) information relating to the liability insurance policy including the type or types of insurance, the amounts of various policy limits, whether the policy was occurrence or claims-made, the classification of the insured, and reserves for the claim;
- (3) details concerning any injury, damage, and other losses that were the subject of the claim, including the types of injuries, damages, and other losses, where and how injuries, damages, and other losses occurred, age of any injured party, and whether an injury was work-related;
- (4) details relating to the claims process including whether suit was filed, where suit was filed, whether attorneys were involved, stage at which claim was closed, court verdict, information relating to appeals, number of defendants, and whether claim was settled outside of court and, if so, at what stage;
- (5) detailed information relating to the amounts paid on the claim including information relating to total amount of a court award, the amount paid by the insurer, amounts paid by other insurers, amounts paid by other defendants, collateral sources, structured settlements, amount of noneconomic compensatory damages, amount of prejudgment interest, amounts paid for defense costs, amounts paid for punitive damages, and amounts of allocated loss adjustment expenses; and
- (6) any other information that the State Board of Insurance determines to be significant in allowing the Board and the legislature to monitor the liability insurance industry to assure its solvency and to assure that liability insurance is available, affordable, and providing adequate protection in Texas.

Sec. 4. CONTENT OF SUMMARY CLOSED CLAIM REPORT FORM. The summary closed claim report forms adopted by the State Board of Insurance for reports required under Sections 2(c) and 2(d) of this article must include provisions for reporting:

- (1) information relating to identification of the insurer;
- (2) information relating to the liability insurance policy including the type or types of insurance, the classification of the insured, and reserves for the claim;
- (3) details relating to the claims process including whether suits were filed, whether attorneys were involved, the stage at which claims were closed, court verdict, information relating to appeals, and whether the claims were settled outside of court and at what stage;
- (4) information relating to the amounts paid on the claim including the total amount of a court award, the amount paid to the claimant by the insurer, amounts paid for defense costs, punitive damages, and loss adjustment expenses; and
- (5) any other information that the State Board of Insurance determines to be significant in allowing the Board and the legislature to monitor the insurance industry to assure its solvency and to insure that liability insurance is available, affordable, and providing adequate protection in Texas.

Sec. 5. RULES AND FORMS. The State Board of Insurance may promulgate necessary rules to carry out this article, to define terminology, criteria, content, and other matters relating to the reports, and to designate other types or lines of liability insurance required to provide information under this article and may prescribe the form and content of the closed claim reports and summary claims reports to be filed.

Sec. 6. COMPILATION OF DATA; REPORT. (a) The State Board of Insurance shall compile the data included in individual closed claim reports and summary claims reports into a composite form and shall prepare annually a written report of this composite data.

(b) The report shall be available to the public, and copies of the report shall be submitted to the presiding officers of each house of the legislature.

(c) The State Board of Insurance on request of the lieutenant governor, speaker of the house, or the chairman of a legislative committee shall provide to the legislature further composite data based on closed claim reports and summary claim reports.

Sec. 7. INFORMATION CONFIDENTIAL. (a) Information included in individual closed claim reports and individual summary claim reports submitted by insurers under this article is confidential and may not be made available by the State Board of Insurance to the public.

(b) Information included in the individual closed claim reports and individual summary claim reports may be examined only by the members of the State Board of Insurance, the commissioner of insurance, and the employees of the State Board of Insurance.

CAPERTON  
LYON

The amendment was read and was adopted viva voce vote.

Senator Caperton offered the following amendment to the bill:

**Floor Amendment No. 3**

Amend C.S.S.B. 291 by deleting Article 1.24C. DISTRIBUTION OF PROCEEDS STATEMENT in its entirety.

The amendment was read and was adopted viva voce vote.

Senator Caperton offered the following amendment to the bill:

**Floor Amendment No. 4**

Amend C.S.S.B. 291 as follows:

(1) Add the following section to Article I:

SECTION 1.02. Chapter 1, Insurance Code, is amended by adding Articles 1.35A and 1.35B to read as follows:

Art. 1.35A. DIVISION OF CONSUMER PROTECTION. (a) The division of consumer protection is created in the State Board of Insurance to represent the interests of insurance consumers in Texas.

(b) The governor with the advice and consent of the senate shall appoint a public counsel who shall serve as the executive director of the Division of Consumer Protection.

(c) To be eligible to serve as public counsel for the Division of Consumer Protection, a person must be a resident of Texas and be eligible to practice law in Texas. The public counsel shall be a person who has demonstrated a strong commitment and involvement in efforts to safeguard the rights of the public and who possesses the knowledge and experience necessary to practice effectively in insurance proceedings.

(d) The public counsel shall serve for a term of two years expiring on February 1 of each odd-numbered year.

(e) The public counsel, as executive director of the Division of Consumer Protection, shall be charged with the responsibility of administering, enforcing, and carrying out the provisions of this chapter, including preparation and submission to the legislature of a budget for the division, employing all necessary professional, technical, and other employees to carry out the provisions of this article, approval of expenditures for professional services, travel, per diem, and other actual and necessary expenses incurred in administering the division. Expenses for the division shall be paid from the assessment imposed in Article 1.35B of this chapter. The compensation for employees of the Division of Consumer Protection shall be fixed by the legislature as provided by the General Appropriations Act.

(f) During the term of service and for a period of two years following the end of service, any attorney who serves as a counsel for the Division of Consumer Protection may not have a direct or indirect interest in any insurance company, agency, or entity that is regulated by the State Board of Insurance or provide legal services directly or indirectly to or be employed in any capacity by an insurance company, agency, or entity regulated by the State Board of Insurance. A person who serves as a counsel may otherwise engage in the private practice of law after his service as a counsel for the Division of Consumer Protection ends.

(g) The Division of Consumer Protection may assess the impact of insurance rates, rules, and forms related to property and casualty insurance on insurance consumers in Texas and, in its own name, shall act as an advocate of positions that are most advantageous to a substantial number of insurance consumers as determined by the public counsel for the division.

(h) The public counsel pursuant to Chapter 5 and Article 21.21-2 of the Insurance Code:

(1) may appear or intervene as a matter of right before the State Board of Insurance as a party or otherwise on behalf of insurance consumers as a class in matters involving rates, rules, and forms affecting property and casualty insurance;

(2) may appear as counsel if requested by any party who has undertaken to appeal a decision of the State Board of Insurance under the authority of this subsection, but may not initiate an appeal on his or her own motion;

(3) is entitled to access to any records of the State Board of Insurance that are available to any party other than the board's staff in a proceeding before the board;

(4) is entitled to obtain discovery under the Administrative Procedure and Texas Register Act of any nonprivileged matter that is relevant to the subject matter involved in any proceeding or submission before the State Board of Insurance; and

(5) may respond to requests by the legislature to provide information relating to the interests of insurance consumers, including requests to recommend legislation affecting those rights.

Art. 1.35B. ASSESSMENT FOR THE DIVISION OF CONSUMER PROTECTION. (a) Each property and casualty insurer authorized to do business in this state shall pay an assessment of 5.7 cents for each policy delivered, issued for delivery, or renewed in this state for the purpose of defraying the costs of creating, administering, and operating the Division of Consumer Protection.

(b) The Division of Consumer Protection fund is created in the State Treasury, and all assessments collected under this article must be deposited in the State Treasury to the credit of that fund as provided by rules of the comptroller of public accounts.

(c) The comptroller of public accounts shall adopt necessary rules to provide for the collection and payment to the division of consumer protection fund of assessments collected by insurers under this article.

(d) Money deposited in the division of consumer protection fund may be appropriated only for the purpose of paying the costs of creating, administering, and operating the division.

(e) Any order of the board which determines, approves, or sets a rate under this chapter and is appealed shall be and remain in effect during the pendency of an appeal. During the pendency of the appeal, an insurer shall use the rate provided in the order being appealed. Such rate shall be lawful and valid during such appeal, and an insurer shall not be required to make any refund therefrom after a decision on the appeal. If a decision on appeal shall vacate the order, the rate established by the board prior to the rendition of the vacated order shall be in effect from and after the date of remand and until the board shall make a further determination; however, the board shall consider the order of the court in setting future rates.

(2) Add the following section to Article I:

SECTION 1.03. Section (b), Article 1.09-1, Insurance Code, is amended to read as follows:

(b) In all rate hearings and policy form proceedings before the Board or the Commissioner of Insurance, except for those rate hearings and proceedings as provided in Subsections (g) and (h), Article 1.35A, Chapter 1, Insurance Code, the Attorney General may intervene in the public interest. The Board shall have and exercise the power of subpoena and subpoena duces tecum for witnesses, documents, and other evidence to the extent of the jurisdiction of this state for such hearings and proceedings on its own motion or upon application of the Attorney General.

CAPERTON  
GREEN  
LYON  
ANDERSON

The amendment was read.

Senator Caperton offered the following amendment to Floor Amendment No. 4:

**Floor Amendment No. 5**

Amend Floor Amendment No. 4 to C.S.S.B. 291 on page 4, line 1, by removing subsection (e) in its entirety from Article 1.35B, and inserting subsection (e) on page 3, after line 12, and relettering said subsection (e) as subsection (i) of Article 1.35A.

The amendment was read and was adopted viva voce vote.

Senator Caperton offered the following amendment to Floor Amendment No. 4:

**Floor Amendment No. 6**

Amend Floor Amendment No. 4 to C.S.S.B. 291 as follows:

- (1) on p. 1, line 24, after the word "this" and before the comma by striking the word "chapter" and inserting the word "act".
- (2) on p. 3, line 16, after the word "policy" and before the word "delivered" by inserting the words "of property and casualty insurance".

The amendment was read and was adopted viva voce vote.

Question recurring on the adoption of Floor Amendment No. 4 as amended, the amendment was adopted by the following vote: Yeas 26, Nays 5.

Yeas: Anderson, Armbrister, Barrientos, Blake, Brooks, Caperton, Edwards, Farabee, Glasgow, Green, Harris, Johnson, Krier, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Tejeda, Truan, Uribe, Washington, Whitmire, Zaffirini.

Nays: Brown, Henderson, Jones, Leedom, Sims.

Senator Johnson offered the following amendment to the bill:

**Floor Amendment No. 7**

Amend C.S.S.B. 291, on page 6, by striking lines 35 through 48 and substituting the following:

(h) Except for the initial rates, rates for liability insurance that are approved on a standard and uniform basis shall be effective for a period of one year. The initial rates for the two-year period beginning on the effective date of this section, shall not exceed those rates in effect on June 1, 1987 for the same insurance coverage. During this initial two-year period, the Board may consider new rate filings only if the new rates are less than the previously approved rates for the same coverage. At the end of the initial two-year period, rates approved by the Board expire, and for an insurer to continue to sell the insurance coverage to which the expired rates applied, a new rate filing and approval under this article is required.

The amendment was read.

On motion of Senator Jones, Floor Amendment No. 7 was tabled by the following vote: Yeas 19, Nays 11.

Yeas: Armbrister, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Harris, Henderson, Jones, Krier, Leedom, McFarland, Montford, Parker, Santiesteban, Sims, Tejeda, Truan.

Nays: Anderson, Barrientos, Green, Johnson, Lyon, Parmer, Sarpalius, Uribe, Washington, Whitmire, Zaffirini.



Absent: Glasgow.

On motion of Senator Jones and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

**COMMITTEE SUBSTITUTE SENATE BILL 291  
ON THIRD READING**

Senator Jones moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.S.B. 291 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

**CO-AUTHOR OF SENATE BILL 291**

On motion of Senator Jones and by unanimous consent, Senator Lyon will be shown as Co-author of S.B. 291.

**HOUSE CONCURRENT RESOLUTION 191**

The President laid before the Senate the following resolution:

**H.C.R. 191**, Inviting the Honorable George Bush, Vice-President of the United States, to address a Joint Session of the Legislature.

The resolution was read.

On motion of Senator Blake and by unanimous consent, the resolution was considered immediately and was adopted viva voce vote.

**COMMITTEE SUBSTITUTE SENATE BILL 504  
ON THIRD READING**

Senator Lyon moved to suspend the regular order of business to take up for consideration at this time on its third reading and final passage:

**C.S.S.B. 504**, Relating to a hunter education program; providing penalties.

The motion prevailed by the following vote: Yeas 22, Nays 7.

Yeas: Anderson, Armbrister, Barrientos, Blake, Brooks, Caperton, Farabee, Harris, Johnson, Jones, Krier, Lyon, Montford, Parker, Parmer, Santiesteban, Sarpalius, Tejeda, Truan, Uribe, Washington, Zaffirini.

Nays: Edwards, Glasgow, Green, Henderson, Leedom, Sims, Whitmire.

Absent: Brown, McFarland.

The bill was read third time and was finally passed by the following vote: Yeas 22, Nays 7. (Same as previous roll call)

**HOUSE CONCURRENT RESOLUTION 64  
ON SECOND READING**

On motion of Senator Brooks and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading:

**H.C.R. 64**, Inviting the Province of Taiwan to join with Texas in a sister state relationship.

The resolution was read second time and was adopted viva voce vote.

**BILLS AND RESOLUTIONS SIGNED**

The President announced the signing in the presence of the Senate, after the caption had been read, the following enrolled bills and resolutions:

<b>H.B. 36</b>	<b>H.C.R. 25</b>
<b>H.B. 37</b>	<b>H.C.R. 136</b>
<b>H.B. 418</b>	<b>H.C.R. 141</b>
<b>H.B. 426</b>	<b>H.C.R. 144</b>
<b>H.B. 720</b>	<b>H.C.R. 180</b>
<b>H.B. 878</b>	<b>H.C.R. 181</b>

**TRIBUTE TO SENATOR ZAFFIRINI**

Senator Truan was recognized and brought to the Senate's attention that Senator Zaffirini had returned from Los Angeles, from an overnight trip, where she was inducted into the National Hispanic Hall of Fame.

The Senate extended congratulations to Senator Zaffirini on this honor.

**SENATE RULE 103 SUSPENDED**

On motion of Senator Caperton and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Jurisprudence might consider **H.B. 33** tomorrow at 9:00 a.m.

**NOTICE OF SESSION TO HOLD  
LOCAL AND UNCONTESTED BILLS CALENDAR**

Senator Blake announced that a Local and Uncontested Bills Calendar had been placed on the Members' desks and gave notice that a Local and Uncontested Bills Calendar would be held at 8:30 a.m. on Thursday, May 7, 1987, and that all bills and resolutions would be considered on second and/or third reading in the order in which they are listed.

**MOTION TO RECESS**

On motion of Senator Brooks and by unanimous consent, the Senate agreed to take recess until 8:30 a.m. tomorrow. The Senate further agreed to take recess at the conclusion of tomorrow's Local Calendar Session until 10:30 a.m. tomorrow.

**MEMORIAL RESOLUTION**

**S.R. 512** - By Parker: Memorial resolution for Patrick Clay Walker.

**WELCOME AND CONGRATULATORY RESOLUTIONS**

**H.C.R. 164** - (Washington): Extending congratulations to James and Mary Lou Moore on the birth of their daughter, Amanda Noelle Moore.

**H.C.R. 190** - (Henderson): Honoring a group of 5th grade students from Millsap Elementary School.

**S.R. 507** - By Brown: Extending welcome to the Magic Circle Republican Women's Club of Houston.

**S.R. 509** - By Barrientos: Paying tribute to the life and work of President Harry S. Truman and commending The Harry S. Truman Good Neighbor Award Foundation.

**S.R. 510** - By Green: Urging all Texans to remember the gallant men who are prisoners of war or missing in action and their families.

**S.R. 511** - By Leedom: Commending Elizabeth J. Delahoussaye.

S.R. 513 - By Parker: Commending Dr. Bill L. Farmer.

**RECESS**

On motion of Senator Brooks, the Senate at 3:54 p.m. took recess until 8:30 a.m tomorrow.

**FIFTY-SECOND DAY**  
(Continued)  
(Thursday, May 7, 1987)

**AFTER RECESS**

The Senate met at 8:30 a.m. and was called to order by Senator Blake.

**MESSAGE FROM THE HOUSE**

House Chamber  
May 7, 1987

HONORABLE W. P. HOBBY  
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

**H.B. 1219**, Relating to the authority of a judge to call a Court of Inquiry and to the organization and functions of the Court of Inquiry.

**H.B. 1543**, Relating to reimbursement to the State for the provision to a school district of an accreditation monitor or master.

**H.B. 1989**, Relating to the offense of intentionally altering or obscuring motor vehicle license plates.

**H.B. 2158**, Relating to granting limited law enforcement authority to certain employees of the Texas Department of Corrections.

**H.B. 1746**, Relating to certain licenses and license fees required by the Parks and Wildlife Department.

**H.B. 166**, Relating to county regulation of persons who transport certain waste materials from one location to another; providing a penalty.

**H.B. 2250**, Relating to the hours of labor of fire fighters and police officers in certain cities.

**H.B. 502**, Relating to the adjudication and disposition of children who engage in certain conduct involving the inhalation of certain substances.

**H.B. 1410**, Relating to a notice that a driver's license and motor vehicle registration have been suspended for failure to maintain financial responsibility.

**H.B. 1531**, Relating to the regulation of the manufacture, distribution, conversion, and sale of certain motor vehicles.

**H.B. 280**, Relating to presumptions applicable to the offense of evading arrest and to the penalties imposed on conviction of the offense.

**H.B. 1402**, Relating to rights of State employees regarding intellectual property.

**H.B. 999**, Relating to the locations at which hearings regarding workers' compensation claims may be conducted by the Industrial Accident Board.

**H.B. 2008**, Relating to creation of a local economic development agency having the powers to tax and issue bonds and the power of eminent domain.

**H.B. 841**, Relating to the licensing and regulation of certain insurance agents.

**H.B. 802**, Relating to the authority of a podiatrist to certify certain disabilities for insurance purposes.

**H.B. 1894**, Relating to the comprehensive assessment of a student for placement in a special education program.

**H.B. 911**, Relating to statewide emergency telephone number service and authorizing the imposition of fees.

**H.B. 344**, Relating to the responsibility to provide indigent health care services after a public hospital is closed, sold, or leased.

**H.B. 743**, Relating to financing surplus lines insurance premiums.

The House has concurred in Senate amendments to **H.B. 275** by a non-record vote.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 123**: Rudd, Chairman; Cavazos, McWilliams, Vowell, Williamson.

Respectfully,

BETTY MURRAY, Chief Clerk  
House of Representatives

#### LOCAL AND UNCONTESTED BILLS CALENDAR

The Presiding Officer (Senator Blake in Chair) announced that the time had arrived for consideration of the Local and Uncontested Bills Calendar.

The regular order of business having been suspended by Senate Rule 14.1(f), the following bills were laid before the Senate, read second time, amended where applicable, passed to engrossment/third reading, read third time and passed: (Vote on Constitutional Three-Day Rule and final passage indicated after the caption of each bill.)

**S.C.R. 105** (Blake) Authorizing creation of the Capitol Centennial Committee. (vv)

**S.B. 286** (Parker) Relating to membership and service credit in the Employees Retirement System of Texas for certain temporary employees. (30-1) Washington "Nay" (31-0)

**S.B. 595** (Parmer) Relating to the regulation of distributors who transport donated USDA commodities under contract with a State agency. (30-1) Washington "Nay" (31-0)

**C.S.S.B. 646** (Brown) Relating to the exemption from certain administrative procedures in the Administrative Procedure and Texas Register Act of contested cases of breath analysis certification suspension, revocation, or termination. (30-1) Washington "Nay" (31-0)

**S.B. 708** (Henderson) Relating to alcoholic beverage law masters in certain counties. (30-1) Washington "Nay" (31-0)

Senator Henderson offered the following committee amendment to the bill:

Amend **S.B. 708** by striking subsections (b) and (c) of the proposed Section 61.311 (Lines 2 through 6 on page two of the bill) and substituting, in lieu thereof, the following:

(b) A master must be an employee of the alcoholic beverage commission designated by the administrator and must be well informed in the law of this state.

(c) The commission is entitled to receive reimbursement for its expenses in connection with furnishing a master under this chapter. If the commission and the commissioners court of the county in which the master serves do not have a contract providing for reimbursement of expenses, the county judge may not appoint a master to hear an application under this chapter.

The committee amendment was read and was adopted viva voce vote.

On motion of Senator Henderson and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**S.B. 868** (Blake) Relating to actions and meetings of the Texas Employment Commission and participation by member by telephonic communication. (30-1) Washington "Nay" (31-0)

**S.B. 878** (Harris) Relating to group insurance definitions. (30-1) Washington "Nay" (31-0)

**S.B. 879** (Harris) Relating to group insurance definitions. (30-1) Washington "Nay" (31-0)

**C.S.S.B. 992** (Parker) Relating to reduction of paperwork in institutions of higher education. (30-1) Washington "Nay" (31-0)

**S.B. 1080** (Henderson) Relating to deadlines for filing certain financial statements and to forms provided by the Secretary of State. (30-1) Washington "Nay" (31-0)

**C.S.S.B. 1109** (Krier) Relating to the issuance of license receipts by persons other than the county tax assessor-collector. (30-1) Washington "Nay" (31-0)

**S.B. 1312** (Montford) Relating to the frequency of meetings of the Texas Board of Health. (30-1) Washington "Nay" (31-0)

**C.S.S.B. 1326** (Blake) Relating to the creation, administration, powers, duties, functions, operations, and financing of the Rayburn Country Municipal Utility District and providing for the authorization of bonds and the levy of property taxes. (30-1) Washington "Nay" (31-0)

**S.B. 1334** (Armbrister) Relating to the jurisdiction of the County Court at Law of Williamson County. (30-1) Washington "Nay" (31-0)

**S.B. 1335** (Armbrister) Relating to the creation of the County Court at Law No. 2 of Williamson County. (30-1) Washington "Nay" (31-0)

**C.S.S.B. 1336** (Armbrister) Relating to the jurisdiction of the County Court at Law of Williamson County and to the redesignation of that court as the County Court at Law No. 1 of Williamson County. (30-1) Washington "Nay" (31-0)

**S.B. 1346** (Green) Relating to the qualifications of interpreters for the deaf in certain proceedings. (30-1) Washington "Nay" (31-0)

**S.B. 1388** (Glasgow) Relating to the duration of existence of agricultural cooperative marketing associations. (30-1) Washington "Nay" (31-0)

**S.B. 1403** (Brooks) Relating to the requirement that a hospital make an itemized statement of billed services available to a patient. (30-1) Washington "Nay" (31-0)

**C.S.S.B. 1409** (Lyon) Relating to authorization of county commissioners within certain counties to establish and finance systems to assist the administration of the judicial appellate process by the establishment of a court cost fee in certain cases. (30-1) Washington "Nay" (31-0)

**S.B. 1417** (McFarland) Relating to the authority to review and approve change orders to certain public works contracts. (30-1) Washington "Nay" (31-0)

**C.S.S.B. 1424** (Johnson) Relating to the administration, powers, bond authority, and repayment of bonds or notes of Grand Prairie Metropolitan Utility and Reclamation District. (30-1) Washington "Nay" (31-0)

**S.B. 1429** (Lyon) Relating to the creation, organization, boundaries, powers, including the power of eminent domain, duties, functions, financing, and bond and tax authority of the St. Paul Water Improvement, Road and Utility District No. 1. (30-1) Washington "Nay" (31-0)

Senator Lyon offered the following committee amendment to the bill:

Amend **S.B. 1429** by inserting a new Subsection (d) in SECTION 11 as follows and relettering existing subsections accordingly:

(d) In exercising the power of eminent domain, if the district requires relocating, raising, lowering, rerouting, changing the grade, or altering the construction of any railroad, highway, pipeline, or electric transmission and electric distribution, telegraph, or telephone lines, conduits, poles, or facilities, the district must bear the actual cost of relocating, raising, lowering, rerouting, changing the grade, or altering the construction to provide comparable replacement without enhancement of facilities after deducting the net salvage value derived for the old facility.

The committee amendment was read and was adopted viva voce vote.

On motion of Senator Lyon and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**S.B. 1437** (Krier) Relating to the qualifications, election, and meetings of the board of directors of the San Antonio River Authority. (30-1) Washington "Nay" (31-0)

**H.B. 526** (Armbrister) Relating to the rate of tax that a seawall commission in Matagorda County may impose. (30-1) Washington "Nay" (31-0)

**H.B. 568** (Montford) Relating to motor vehicles used to transport or manufacture concrete. (30-1) Washington "Nay" (31-0)

**H.B. 597** (Jones) Relating to the authority of counties to provide for emergency ambulance service. (30-1) Washington "Nay" (31-0)

**H.B. 1221** (Armbrister) Relating to the expenses of a watermaster. (30-1) Washington "Nay" (31-0)

**H.B. 1731** (Parker) Relating to the authority of the Jefferson County Drainage District No. 6 to make purchases and to acquire and sell property. (30-1) Washington "Nay" (31-0)

**H.B. 1732** (Caperton) Relating to commodities for which a commodity producers board may be established. (30-1) Washington "Nay" (31-0)

**H.B. 1737** (Parker) Relating to the fiscal year and compensation of directors of the Trinity Bay Conservation District. (30-1) Washington "Nay" (31-0)

**H.B. 1834** (McFarland) Relating to certain fresh water supply districts assuming the authority of road districts. (30-1) Washington "Nay" (31-0)

**H.C.R. 137** (Blake) Authorizing the Speaker and Lieutenant Governor to create special joint committees during the interim. (vv)

**CONCLUSION OF SESSION FOR LOCAL AND UNCONTESTED  
BILLS CALENDAR**

The Presiding Officer (Senator Blake in Chair) announced that the session for the consideration of the Local and Uncontested Bills Calendar was concluded.

**RECESS**

Senator Blake announced at 8:47 a.m. that the Senate would stand recessed until 10:30 a.m. today in accordance with a motion previously adopted by the Senate.

**AFTER RECESS**

The Senate met at 10:30 a.m. and was called to order by the President.

**SENATE BILLS AND RESOLUTION ON FIRST READING**

On motion of Senator Lyon and by unanimous consent, the following bills and resolution were introduced, read first time and referred to the Committee indicated:

**S.B. 1494** by Lyon State Affairs  
Relating to regulation by the Public Utility Commission of Texas of fuel cost collection by electric utilities.

**S.B. 1495** by Edwards, Jones Intergovernmental Relations  
Relating to a foreign trade zone in Bell County, McLennan County, or both counties.

**S.B. 1496** by Brooks Finance  
Relating to the appraisal of certain property for ad valorem taxation.

**S.B. 1497** by Farabee State Affairs  
Relating to the regulation of veterinarians; providing criminal and civil penalties.

**S.B. 1498** by Zaffirini, Anderson Health and Human Services  
Relating to consent by minors to treatment for chemical addiction, dependency, or use.

**S.C.R. 117** by Brooks Health and Human Services  
Directing the State Board of Education to use their authority to clarify and give direct guidelines regarding compulsory attendance.

**HOUSE BILLS ON FIRST READING**

The following bills received from the House were read the first time and referred to the Committee indicated:

**H.B. 166**, To Committee on Intergovernmental Relations.

**H.B. 280**, To Committee on Criminal Justice.

**H.B. 344**, To Committee on Health and Human Services.

**H.B. 502**, To Committee on Jurisprudence.

**H.B. 743**, To Committee on Economic Development.

**H.B. 802**, To Committee on Economic Development.

**H.B. 841**, To Committee on Economic Development.

**H.B. 911**, To Committee on State Affairs.

H.B. 999, To Committee on Jurisprudence.  
H.B. 1219, To Committee on Criminal Justice.  
H.B. 1402, To Committee on Education.  
H.B. 1410, To Committee on State Affairs.  
H.B. 1531, To Committee on Economic Development.  
H.B. 1543, To Committee on Education.  
H.B. 1746, To Committee on Natural Resources.  
H.B. 1894, To Committee on Education.  
H.B. 1989, To Committee on State Affairs.  
H.B. 2008, To Committee on State Affairs.  
H.B. 2158, To Committee on Criminal Justice.  
H.B. 2250, To Committee on Intergovernmental Relations.

**CO-AUTHOR OF SENATE BILL 1498**

On motion of Senator Zaffirini and by unanimous consent, Senator Anderson will be shown as Co-author of S.B. 1498.

**REPORTS OF STANDING COMMITTEES**

By unanimous consent, Senator Parker submitted the following report for the Committee on Education:

**C.S.S.C.R. 48**

By unanimous consent, Senator Caperton submitted the following report for the Committee on Jurisprudence:

**C.S.H.B. 855**

**MESSAGE FROM THE GOVERNOR**

The following Message from the Governor was read and was referred to the Committee on Nominations:

Austin, Texas  
May 7, 1987

TO THE SENATE OF THE SEVENTIETH LEGISLATURE,  
REGULAR SESSION:

I ask the advice, consent and confirmation of the Senate with respect to the following appointments:

TO BE MEMBERS OF THE TEXAS BOARD OF MENTAL HEALTH AND  
MENTAL RETARDATION:

For terms to expire January 31, 1993:

ROGER BATEMAN  
401 Cape Cod  
Corpus Christi, Texas 78412

Mr. Bateman is being reappointed.

CHARLES M. COOPER  
3505 Gaston Avenue  
Dallas, Texas 75246

Mr. Cooper will be replacing David M. Shannon of Odessa whose term expired.

TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CENTRAL  
COLORADO RIVER AUTHORITY:



For a term to expire February 1, 1993:

ROBERT JOSEPH CHEANEY II  
618 Wallis Avenue  
Santa Anna, Texas 76878

Mr. Cheaney is being reappointed.

TO BE MEMBERS OF THE TEXAS TECH UNIVERSITY BOARD OF REGENTS:

For terms to expire January 31, 1993:

REX POWELL FULLER  
601 RepublicBank Building  
Lubbock, Texas 79401

Mr. Fuller is being reappointed.

JAMES LARKIN GULLEY, JR.  
P. O. Box 8180  
Tyler, Texas 75711

Mr. Gulley will be replacing John E. Birdwell, Jr., of Muleshoe whose term expired.

TO BE A MEMBER OF THE TEXAS COLLEGE AND UNIVERSITY SYSTEM COORDINATING BOARD:

For a term to expire August 31, 1987:

KENT RONALD HANCE, SR.  
Boyd, Veigel & Hance  
P. O. Box 1  
Lubbock, Texas 79408

Mr. Hance will be filling the unexpired term of Gary Lynn Watkins of Odessa who resigned.

TO BE A MEMBER OF THE TEXAS COMMISSION FOR THE DEAF:

For a term to expire January 31, 1993:

THALIA H. MUNOZ  
P. O. Box 78  
Rio Grande City, Texas 78582

Mrs. Munoz will be replacing Dominick V. Bonura of Big Spring whose term expired.

TO BE A MEMBER OF THE TEXAS ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS:

For a term to expire September 1, 1991:

JOSEPH PENA  
2027 Whippoorwill  
Carrollton, Texas 75006

Mr. Pena will be replacing Dick Whittington of Dallas whose term expired.

TO BE A MEMBER OF THE TEXAS AIR CONTROL BOARD:

For a term to expire September 1, 1989:

WILLIAM H. QUORTRUP  
P. O. Box 672  
Carrollton, Texas 75006

Mr. Quortrup will be replacing Charles R. Jaynes of Waco whose term expired.

TO BE A MEMBER OF THE TEXAS REAL ESTATE COMMISSION:

For a term to expire January 31, 1993:

MARSHA SHANKLIN  
406 Cherokee Lane  
Victoria, Texas 77901

Ms. Shanklin will be replacing Frank Tompkins of Corpus Christi whose term expired.

**TO BE A MEMBER OF THE PAN AMERICAN UNIVERSITY BOARD OF REGENTS:**

For a term to expire August 31, 1991:

ROBERT WARD SHEPARD  
Box 1830  
Harlingen, Texas 78551

Mr. Shepard will be filling the unexpired term of Ramon Garcia of Edinburg whose nomination was withdrawn from the Senate by Governor Mark White on August 19, 1986.

**TO BE A MEMBER OF THE FINANCE COMMISSION OF TEXAS:**

For a term to expire February 1, 1989:

SCOTT BARNETT SMITH  
P. O. Box 346  
Denison, Texas 75020

Mr. Smith will be filling the unexpired term of Ruben H. Johnson of Austin who resigned.

**TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE GUADALUPE-BLANCO RIVER AUTHORITY:**

For a term to expire February 1, 1993:

PRESTON A. STOFER  
P. O. Box 52  
Long Mott, Texas 77972

Mr. Stofer is being reappointed.

**TO BE A MEMBER OF THE UPPER COLORADO RIVER AUTHORITY BOARD OF DIRECTORS:**

For a term to expire February 1, 1991:

CHESTER LEON WILSON  
200 N. E. Railroad-Drawer S  
Bronte, Texas 76933

Mr. Wilson will be replacing William H. Allen of Robert Lee whose term expired.

Respectfully submitted,

/s/W. P. Clements, Jr.  
William P. Clements, Jr.  
Governor of Texas

**SENATE BILL 1148 WITH HOUSE AMENDMENT**

Senator Harris called **S.B. 1148** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

**Committee Amendment - Shea**

Amend **S.B. 1148** as follows:

Delete the word "except" between the words "apply" and "with" on line 4 page 10.

The amendment was read.

Senator Harris moved to concur in the House amendment.

The motion prevailed by the following vote: Yeas 31, Nays 0.

**SENATE BILL 1188 ON SECOND READING**

On motion of Senator Farabee and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**S.B. 1188**, Relating to the sale, lease, transfer, or termination of certain business opportunities.

The bill was read second time and was passed to engrossment viva voce vote.

**SENATE BILL 1188 ON THIRD READING**

Senator Farabee moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 1188** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**SENATE BILL 872 ON SECOND READING**

On motion of Senator Glasgow and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**S.B. 872**, Relating to the prevention and administration of insolvencies, impairments, and receivership and conservatorship estates by the Texas Property and Casualty Guaranty Association.

The bill was read second time.

Senator Glasgow offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **S.B. 872** as follows:

- (1) On page 1, line 16, strike "title insurance agents."
- (2) On page 1, line 18, insert the following after "code" and before the period: "and who participated in transactions involving lines of insurance within the scope of this Act".

The committee amendment was read and was adopted viva voce vote.

Senator Glasgow offered the following committee amendment to the bill:

**Committee Amendment No. 2**

Amend **S.B. 872** as follows: On page 5, line 25, insert the following new Section 3 and renumber the subsequent section appropriately:

**SECTION 3.** The authority granted in Subsection E, Section 14, Texas Property and Casualty Insurance Guaranty Act (Article 21.28-C, Insurance Code) to the board of directors of the association to expend funds from the administrative account for administrative expenses incurred by a supervisor or conservator appointed by the Commissioner or a receiver appointed by a court of competent jurisdiction for a nonmember of the association or unauthorized insurer operating in this state in certain instances expires on September 1, 1991.

The committee amendment was read and was adopted viva voce vote.

Senator Glasgow offered the following committee amendment to the bill:

**Committee Amendment No. 3**

Amend **S.B. 872** as follows: On page 2, line 24, strike "8A" after "Section" and before "of" and substitute "8".

The committee amendment was read and was adopted viva voce vote.

On motion of Senator Glasgow and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

**SENATE BILL 872 ON THIRD READING**

Senator Glasgow moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 872** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE SENATE BILL 873  
ON SECOND READING**

On motion of Senator Glasgow and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 873**, Relating to the liquidation, rehabilitation, reorganization and conservation of insurers.

The bill was read second time and was passed to engrossment viva voce vote.

**COMMITTEE SUBSTITUTE SENATE BILL 873  
ON THIRD READING**

Senator Glasgow moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.S.B. 873** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

**SENATE BILL 1036 ON SECOND READING**

On motion of Senator Tejeda and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**S.B. 1036**, Relating to the authority of certain partnerships to exercise the power of eminent domain.

The bill was read second time and was passed to engrossment viva voce vote.

**SENATE BILL 1036 ON THIRD READING**

Senator Tejada moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that S.B. 1036 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE SENATE BILL 1327  
ON SECOND READING**

On motion of Senator Truan and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 1327**, Relating to the administration, powers, duties, and financing of the Willacy County Hospital District; granting the authority to issue bonds.

The bill was read second time and was passed to engrossment viva voce vote.

**COMMITTEE SUBSTITUTE SENATE BILL 1327  
ON THIRD READING**

Senator Truan moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.S.B. 1327 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

**SENATE BILL 977 ON SECOND READING**

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**S.B. 977**, Relating to certain requirements for eligibility for unemployment compensation benefits and to employer chargebacks for those benefits.

The bill was read second time.

Senator Armbrister offered the following amendment to the bill:

Amend S.B. 977 as follows:

Strike SECTION 1 and renumber the subsequent sections accordingly.

The amendment was read and was adopted viva voce vote.

On motion of Senator Armbrister and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

**SENATE BILL 977 ON THIRD READING**

Senator Armbrister moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that S.B. 977 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

**HOUSE BILL 834 ON SECOND READING**

On motion of Senator Farabee and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**H.B. 834**, Relating to the use of a deceased individual's name, voice, signature, photograph, or likeness.

The bill was read second time.

Senator Farabee offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **H.B. 834**, Section 26.012(b) by striking section 26.012(b) and inserting the following:

(b) A media enterprise may use a deceased individual's name, voice, signature, photograph or likeness in connection with the coverage of news, public affairs, sporting event or political campaign without consent. Any use other than the above by a media enterprise of a deceased individual's name, voice, signature, photograph or likeness, shall require consent if the material constituting the use is integrally and directly connected with commercial sponsorship or paid advertising. No consent shall be required for the use of the deceased individual's name, voice, signature, photograph or likeness by a media enterprise if the broadcast or article is not commercially sponsored or does not contain paid advertising.

The committee amendment was read and was adopted viva voce vote.

Senator Farabee offered the following committee amendment to the bill:

**Committee Amendment No. 2**

Amend **H.B. 834**, Sec. 26.003 to read as follows:

Sec. 26.003. APPLICABILITY. This chapter applies to an individual (1) alive on or after September 1, 1987, or who died before September 1, 1987 but on or after January 1, 1937; and

(2) whose name, voice, signature, photograph, or likeness has commercial value at the time of his or her death or comes to have commercial value after that time.

The committee amendment was read and was adopted viva voce vote.

Senator Farabee offered the following committee amendment to the bill:

**Committee Amendment No. 3**

Amend **H.B. 834** by adding Sec. 26.001 (4) to read as follows:

(4) "Media enterprise," means a newspaper, magazine, radio station or network, television station or network, or cable television system.

The committee amendment was read and was adopted viva voce vote.

On motion of Senator Farabee and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

#### **HOUSE BILL 834 ON THIRD READING**

Senator Farabee moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 834** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

#### **SENATE BILL 1239 ON SECOND READING**

On motion of Senator Green and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**S.B. 1239**, Relating to additional compensation for judges of certain supreme judicial districts.

The bill was read second time and was passed to engrossment viva voce vote.

#### **SENATE BILL 1239 ON THIRD READING**

Senator Green moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 1239** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

#### **MOTION TO PLACE**

#### **COMMITTEE SUBSTITUTE SENATE BILL 823 ON SECOND READING**

Senator Johnson moved to suspend the regular order of business to take up for consideration at this time:

**C.S.S.B. 823**, Relating to the regulation of dental hygienists, and to the reorganization and continuation of the Dental Hygiene Committee.

The motion was lost by the following vote: Yeas 14, Nays 14. (Not receiving two-thirds vote of Members present)

Yeas: Barrientos, Brooks, Caperton, Edwards, Henderson, Johnson, Jones, Krier, McFarland, Parmer, Uribe, Washington, Whitmire, Zaffirini.

Nays: Anderson, Armbrister, Blake, Brown, Farabee, Glasgow, Green, Harris, Lyon, Montford, Sarpalius, Sims, Tejeda, Truan.

Absent: Leedom, Parker, Santiesteban.

**SENATE BILL 988 ON SECOND READING**

On motion of Senator Barrientos and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**S.B. 988**, Validating creation of the Barton Springs-Edwards Aquifer Conservation District and amending the powers and duties of that district; providing the authority to impose penalties and water use fees; and reducing the authorized level of taxation.

The bill was read second time and was passed to engrossment viva voce vote.

**SENATE BILL 988 ON THIRD READING**

Senator Barrientos moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 988** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**MESSAGE FROM THE HOUSE**

House Chamber  
May 7, 1987

HONORABLE W. P. HOBBY  
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

**H.C.R. 192**, Proclaiming May 23 as the Great Texas Welcome Home Veterans Day.

**H.C.R. 199**, Designating an annual Space Science Week.

The House has concurred in Senate amendments to **H.B. 850** by a non-record vote.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 95**: Wright, Chairman; Madla, Clemons, Berlanga, Schoolcraft.

Respectfully,

BETTY MURRAY, Chief Clerk  
House of Representatives

**COMMITTEE SUBSTITUTE SENATE BILL 938  
ON SECOND READING**

On motion of Senator Krier and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 938**, Relating to the allocation of bank franchise tax revenue to taxing units.

The bill was read second time and was passed to engrossment viva voce vote.



**COMMITTEE SUBSTITUTE SENATE BILL 938  
ON THIRD READING**

Senator Krier moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.S.B. 938 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

**COMMITTEE SUBSTITUTE SENATE BILL 181  
ON SECOND READING**

On motion of Senator Edwards and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 181, Relating to the requirement that an institution of higher education adopt rules regarding faculty workloads.

The bill was read second time and was passed to engrossment viva voce vote.

**COMMITTEE SUBSTITUTE SENATE BILL 181  
ON THIRD READING**

Senator Edwards moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.S.B. 181 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE SENATE BILL 598  
ON SECOND READING**

On motion of Senator Lyon and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 598, Relating to public school textbooks adopted by the State Board of Education.

The bill was read second time.

Senator Lyon offered the following amendment to the bill:

C.S.S.B. 598 is amended by deleting Subsection (c) of SECTION 1 and adding a new subsection (c) to read as follows:

(c) Except as otherwise specifically defined in this chapter, "textbooks" or "books" as used herein shall mean books, systems of instructional materials, or combinations of books and supplementary instructional materials which convey information to the pupil or otherwise contribute to the learning process, computer software, including but not limited to applications using computer assisted instruction, interactive videodisc, other computer courseware, and magnetic media provided that these can be delivered in lieu of textbooks with similar costs to the state.

The amendment was read and was adopted viva voce vote.

On motion of Senator Lyon and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

**COMMITTEE SUBSTITUTE SENATE BILL 598  
ON THIRD READING**

Senator Lyon moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.S.B. 598 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**SENATE BILL 1365 ON SECOND READING**

On motion of Senator Brooks and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**S.B. 1365**, Relating to the study and selection of disposal sites by the Texas Low-Level Radioactive Waste Disposal Authority.

The bill was read second time and was passed to engrossment viva voce vote.

**SENATE BILL 1365 ON THIRD READING**

Senator Brooks moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that S.B. 1365 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**MESSAGE FROM THE HOUSE**

House Chamber  
May 7, 1987

HONORABLE W. P. HOBBY  
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

**S.B. 1428**, Relating to use of a private consultant by the Texas National Research Laboratory Commission. (Amended)

Respectfully,

BETTY MURRAY, Chief Clerk  
House of Representatives

**COMMITTEE SUBSTITUTE SENATE BILL 1382  
ON SECOND READING**

On motion of Senator Jones and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 1382**, Relating to allocation of the authority in the state to issue private activity bonds; repealing Article 12691-8, Vernon's Texas Civil Statutes; repealing Article 5190.9, Vernon's Texas Civil Statutes; and declaring an emergency.

The bill was read second time and was passed to engrossment viva voce vote.

**COMMITTEE SUBSTITUTE SENATE BILL 1382  
ON THIRD READING**

Senator Jones moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.S.B. 1382** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

**SENATE BILL 1477 ON SECOND READING**

On motion of Senator Henderson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**S.B. 1477**, Relating to creation of a Texas Center for Superconductivity at the University of Houston-University Park.

The bill was read second time and was passed to engrossment viva voce vote.

**SENATE BILL 1477 ON THIRD READING**

Senator Henderson moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 1477** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**SENATE BILL 269 ON SECOND READING**

On motion of Senator McFarland and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**S.B. 269**, Adopting the Texas Theft Liability Act.

The bill was read second time and was passed to engrossment viva voce vote.

**SENATE BILL 269 ON THIRD READING**

Senator McFarland moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that S.B. 269 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**SENATE BILL 234 ON SECOND READING**

On motion of Senator Sarpalius and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**S.B. 234**, Relating to the source and amount of payments for the administration of the family farm and ranch security program.

The bill was read second time and was passed to engrossment viva voce vote.

**SENATE BILL 234 ON THIRD READING**

Senator Sarpalius moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that S.B. 234 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

**COMMITTEE SUBSTITUTE SENATE BILL 1049  
ON SECOND READING**

On motion of Senator Green and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 1049**, Relating to notice of insurance coverage before acceptance of collision damage waivers under car rental and lease agreements.

The bill was read second time and was passed to engrossment viva voce vote.

**COMMITTEE SUBSTITUTE SENATE BILL 1049  
ON THIRD READING**

Senator Green moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.S.B. 1049 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

**SENATE JOINT RESOLUTION 54 ON SECOND READING**

On motion of Senator Montford and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**S.J.R. 54**, Proposing a constitutional amendment to authorize the issuance of an additional \$400 million of Texas Water Development Bonds for water supply, water quality, and flood control purposes.

The resolution was read second time and was passed to engrossment viva voce vote.

#### **RECORD OF VOTE**

Senator Washington asked to be recorded as voting "Nay" on the passage of the resolution to engrossment.

#### **SENATE JOINT RESOLUTION 54 ON THIRD READING**

Senator Montford moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.J.R. 54** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The resolution was read third time and was passed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

#### **COMMITTEE SUBSTITUTE SENATE BILL 1406 ON SECOND READING**

On motion of Senator Montford and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 1406**, Relating to the issuance of Texas water development bonds.

The bill was read second time and was passed to engrossment viva voce vote.

#### **RECORD OF VOTE**

Senator Washington asked to be recorded as voting "Nay" on the passage of the bill to engrossment.

#### **COMMITTEE SUBSTITUTE SENATE BILL 1406 ON THIRD READING**

Senator Montford moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.S.B. 1406** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

#### **RECORD OF VOTE**

Senator Washington asked to be recorded as voting "Nay" on the final passage of the bill.

**COMMITTEE SUBSTITUTE SENATE JOINT RESOLUTION 55  
ON SECOND READING**

Senator Parmer moved to suspend the regular order of business to take up for consideration at this time:

**C.S.S.J.R. 55**, Proposing a constitutional amendment providing for the issuance of general obligation bonds to finance certain local public facilities.

The motion prevailed by the following vote: Yeas 25, Nays 4.

Yeas: Anderson, Armbrister, Barrientos, Blake, Brooks, Caperton, Edwards, Farabee, Glasgow, Green, Johnson, Jones, Krier, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Tejada, Truan, Uribe, Whitmire, Zaffirini.

Nays: Brown, Henderson, Leedom, Washington.

Absent: Harris, Sims.

The resolution was read second time.

Senator Parmer offered the following amendment to the resolution:

Amend **C.S.S.J.R. 55** by striking all below the resolving clause and substituting the following:

**SECTION 1.** Article III of the Texas Constitution is amended by adding Section 49-i to read as follows:

Sec. 49-i. (a) The legislature by general law may provide for the issuance of up to \$400 million in general obligation bonds and the use of the bond proceeds to establish a local project fund in the state treasury to be used without further appropriation for:

(1) making loans to local governments to finance the cost of acquisition, construction, repair, renovation, and equipping of public facilities; and

(2) making grants to local governments for use in planning and design of public facilities under Subdivision (1) of this subsection.

(b) Proceeds of the bonds may also be used to pay the expenses of issuance of the bonds and, together with any other available money in the local project fund, to pay the principal of and interest on or to discharge or redeem, in whole or part, any outstanding general obligation bonds issued under this section. The local project fund is composed of proceeds of the bonds authorized by this section, income from investment of money in the fund, amounts received as repayments of financial assistance provided from money in the fund, and other money authorized by the legislature to be deposited in the fund.

(c) The local project fund must contain program accounts, an interest and sinking account, a reserve account, and other accounts authorized by the legislature. The principal of and interest on the bonds shall be paid out of the money in the interest and sinking account. The money in the fund that is not immediately committed to the payment of the principal of and interest on bonds, the provision of financial assistance, or the payment of expenses as provided by this section may be invested and reinvested as provided by law until the money is needed for those purposes.

(d) The legislature may require review and approval of the issuance of the bonds, of the use of the bond proceeds, or of rules adopted by an agency to govern use of the bond proceeds. Notwithstanding any other provision of this constitution, any entity created or directed to conduct this review and approval may include members, or appointees of members, of the executive, legislative, and judicial departments of state government.

(e) Money deposited in the local project fund from repayments of financial assistance, determined as provided by law not to be required for the payment of the

principal of and interest on the bonds under this section, may be used, to the extent not inconsistent with the proceedings authorizing the bonds, to pay the principal of and interest on revenue bonds issued for the purposes of providing money for financial assistance in accordance with the public purposes stated by this section. The revenue bonds are special obligations payable only from those fund receipts and other revenues pledged to the retirement of the revenue bonds and do not constitute indebtedness of the state. The amount of revenue bonds issued may not exceed an aggregate principal amount that can be fully retired from those fund receipts and other pledged revenues. The revenue bonds shall be issued in the form and denominations, on the terms, at the times and places, and in installments as provided by law.

(f) While any of the bonds or interest on the general obligation bonds is outstanding and unpaid, there is appropriated out of the first money coming into the treasury in each fiscal year, not otherwise appropriated by this constitution, the amount sufficient to pay the principal of and interest on the bonds that mature or become due during the fiscal year, less any amount in the interest and sinking account at the end of the preceding fiscal year that is pledged to payment of the bonds or interest.

SECTION 2. This proposed amendment shall be submitted to the voters at an election to be held November 3, 1987. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment providing for the issuance of general obligation bonds to finance certain local public facilities."

The amendment was read and was adopted viva voce vote.

On motion of Senator Parmer and by unanimous consent, the caption was amended to conform to the body of the resolution as amended.

The resolution as amended was passed to engrossment viva voce vote.

#### RECORD OF VOTE

Senator Washington asked to be recorded as voting "Nay" on the passage of the resolution to engrossment.

#### COMMITTEE SUBSTITUTE SENATE JOINT RESOLUTION 55 ON THIRD READING

Senator Parmer moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.S.J.R. 55 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 5.

Yeas: Anderson, Armbrister, Barrientos, Blake, Brooks, Caperton, Edwards, Farabee, Glasgow, Green, Johnson, Jones, Krier, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Tejeda, Truan, Uribe, Whitmire, Zaffirini.

Nays: Brown, Henderson, Leedom, Sims, Washington.

Absent: Harris.

The resolution was read third time and was passed by the following vote: Yeas 25, Nays 5. (Same as previous roll call)

#### GUESTS PRESENTED

Senator Sarpalius was recognized and introduced the Capitol Physician for the Day, Dr. Gilmer Johnson of Plainview.

Senator Krier joined Senator Sarpalius in introducing a Capitol Physician for the Day with the presentation of Dr. Walter Calmbach of San Antonio.

Drs. Johnson and Calmbach were welcomed and received the appreciation of the Senate for their service.

#### **SENATE RULE 103 SUSPENDED**

On motion of Senator Farabee and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on State Affairs might consider H.J.R. 88 at 2:00 p.m. today.

#### **MESSAGE FROM THE HOUSE**

House Chamber  
May 7, 1987

HONORABLE W. P. HOBBY  
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

**S.B. 1134**, Relating to the certification of nursing homes and related institutions that provide specialized care for persons with Alzheimer's disease and related disorders; providing a penalty.

**S.B. 213**, Relating to the operation of golf carts on public streets and roads.

**S.B. 24**, Relating to offenses relating to hazing at or in connection with an educational institution; providing criminal penalties. (Amended)

**S.B. 950**, Relating to the sale of certain State-owned real property to Cherokee County.

Respectfully,

BETTY MURRAY, Chief Clerk  
House of Representatives

#### **SENATE JOINT RESOLUTION 27 ON SECOND READING**

On motion of Senator Blake and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**S.J.R. 27**, Proposing a constitutional amendment authorizing the creation of emergency medical services districts and authorizing those districts to levy an ad valorem tax on property located in the district.

The resolution was read second time and was passed to engrossment viva voce vote.

#### **SENATE JOINT RESOLUTION 27 ON THIRD READING**

Senator Blake moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that S.J.R. 27 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The resolution was read third time and was passed by the following vote: Yeas 31, Nays 0.



**SENATE BILL 669 ON SECOND READING**

On motion of Senator Blake and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**S.B. 669**, Relating to authorizing the creation of emergency medical services districts, to their organization, powers and duties, operations, financing, and dissolution, and to authorizing emergency medical services districts to levy taxes and issue bonds.

The bill was read second time.

Senator Blake offered the following committee amendment to the bill:

Amend Section 15 of **S.B. 669** on page 13, line 12 by striking the words "county tax assessor-collector" and substituting "collector of taxes for the county" in lieu thereof.

The committee amendment was read and was adopted viva voce vote.

On motion of Senator Blake and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

**SENATE BILL 669 ON THIRD READING**

Senator Blake moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 669** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

**MESSAGE FROM THE HOUSE**

House Chamber  
May 7, 1987

HONORABLE W. P. HOBBY  
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

**H.B. 1909**, Relating to the powers and duties of the Texas National Research Laboratory Commission; granting authority to issue bonds.

Respectfully,

BETTY MURRAY, Chief Clerk  
House of Representatives

**HOUSE BILL ON FIRST READING**

The following bill received from the House was read the first time and referred to the Committee indicated:

**H.B. 1909**, To Committee on State Affairs.

**SENATE RULE 74a SUSPENDED**

On motion of Senator Edwards and by unanimous consent, Senate Rule 74a was suspended as it relates to the House amendment to S.B. 1428.

**SENATE BILL 1428 WITH HOUSE AMENDMENT**

Senator Edwards called S.B. 1428 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

**Committee Amendment - Hunter**

Amend S.B. 1428 by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Chapter 836, Acts of the 69th Legislature, Regular Session, 1985 (Article 4413(47d), Vernon's Texas Civil Statutes), is amended by adding Section 5A to read as follows:

Sec. 5A. CONSULTANT. Chapter 454, Acts of the 65th Legislature, Regular Session, 1977 (Article 6252-11c, Vernon's Texas Civil Statutes), does not apply to use by the commission of a private consultant to provide services in connection with formulation or submission of two or more siting proposals under Section 5 of this Act, except that in selecting the consultant the commission shall give the preference required by Section 3(b)(2) of that chapter.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Edwards moved that the Senate do not concur in the House amendment, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

**RECORD OF VOTE**

Senator Sims asked to be recorded as voting "Nay" on the motion to not concur in the House amendment.

The President asked if there were any motions to instruct the Conference Committee on S.B. 1428 before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Edwards, Chairman; Caperton, Harris, Henderson and Jones.

**SENATE RULE 103 SUSPENDED**

On motion of Senator Farabee and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on State Affairs might consider H.B. 1909 at 2:00 p.m. today.

**SESSION TO CONSIDER EXECUTIVE APPOINTMENTS**

The President announced the time had arrived to consider the Executive appointments to agencies, boards and commissions. Notice of submission of these names for consideration was given yesterday by Senator Edwards.

Senator Edwards moved confirmation of the nominees reported yesterday by the Committee on Nominations.

The President asked if there were requests to sever nominees.

Senator Washington requested the nominations of Henry B. Keene and Chris A. Mealy, to be Members of the Board of Pardons and Paroles, be severed.

The request was granted.

**NOMINEES CONFIRMED**

The following nominees, not severed and reported yesterday by the Committee on Nominations, were confirmed by the following vote: Yeas 31, Nays 0.

Member, Texas Aeronautics Commission: HENRY A. SIBLEY, Runnels County.

Member, Texas Board on Aging: MS. NADINE W. FRANCIS, Travis County.

Member, Advisory Board of Athletic Trainers: SANFORD E. MILLER, Nacogdoches County.

Members, Board of Directors, Upper Colorado River Authority: VICTOR WAYNE CHOATE, Tom Green County; BRIAN C. RICHARDS, Runnels County.

Member, Board of Directors, Guadalupe-Blanco River Authority: HARRY A. (ALEX) FISH, Kendall County.

Member, Texas Historical Commission: MRS. BETTY ELLIOTT HANNA, Stephens County.

Member, Texas State Board of Pharmacy: JERRY D. PYLE, Tarrant County.

Member, Board of Directors, Sulphur River Basin Authority: WILLIAM O. MORRISS, Bowie County.

Members, Texas State Board of Public Accountancy: JOHN F. LANIER, JR., Travis County; EARL CHARLES LAIRSON, Harris County.

Member, Board of Directors, Texas Turnpike Authority: JAMES N. MUNS, Collin County.

Judge, 119th Judicial District, Tom Green County: JOHN E. SUTTON, Tom Green County.

**SENATE REFUSED TO CONFIRM NOMINEES**

Question recurring on the confirmation of the nomination of Henry B. Keene and Chris A. Mealy, to be Members of the Board of Pardons and Paroles, the Senate refused to confirm these nominations by the following vote: Yeas 17, Nays 11. (Not receiving two-thirds vote of Members present)

Yeas: Armbrister, Blake, Brown, Edwards, Farabee, Glasgow, Harris, Henderson, Jones, Krier, Leedom, Lyon, McFarland, Montford, Sims, Tejada, Zaffirini.

Nays: Anderson, Barrientos, Brooks, Green, Johnson, Parmer, Sarpalius, Truan, Uribe, Washington, Whitmire.

Absent: Caperton, Parker, Santiesteban.

#### CONGRATULATORY RESOLUTIONS

**S.R. 453** - By Blake: Commending A. L. Mangham, Jr.

**S.R. 514** - By Johnson: Commending Fred Leonard Lander III.

#### ADJOURNMENT

On motion of Senator Brooks, the Senate at 12:33 p.m. adjourned until 9:30 a.m. tomorrow.

#### APPENDIX

Signed by Governor  
(May 6, 1987)

**S.B. 280** (Effective September 1, 1987)  
**S.B. 312** (Effective January 1, 1988)  
**S.B. 326** (Effective August 31, 1987)  
**S.B. 591** (Effective September 1, 1987)  
**S.B. 739** (Effective immediately)  
**S.B. 20** (Effective September 1, 1987)  
**S.B. 355** (Effective August 31, 1987)  
**S.B. 630** (Effective August 31, 1987)  
**S.B. 469** (Effective September 1, 1987)  
**S.B. 431** (Effective September 1, 1987)  
**S.B. 83** (Effective immediately)  
**S.B. 266** (Effective immediately)  
**S.B. 701** (Effective September 1, 1987)  
**H.B. 351** (Effective immediately)  
**H.B. 452** (Effective immediately)  
**H.B. 692** (Effective September 1, 1987)  
**H.B. 475** (Effective immediately)

#### FIFTY-THIRD DAY

(Friday, May 8, 1987)

The Senate met at 9:30 a.m., pursuant to adjournment and was called to order by Senator Brooks.

The roll was called and the following Senators were present: Anderson, Armbrister, Barrientos, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Green, Harris, Henderson, Johnson, Jones, Krier, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sims, Tejeda, Truan, Uribe, Washington, Whitmire, Zaffirini.

Absent-excused: Blake.

A quorum was announced present.

Senate Doorkeeper Jim Morris offered the invocation as follows:

Our Father, give these who serve the long view of their work, and see that sometimes it is better to fail in a cause that will ultimately succeed than to succeed